Official Gazette

REPUBLIC OF THE PHILIPPINES

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OFFICIAL WEEK IN REVIEW

November 30.—PRESIDENT and Mrs. Garcia attended a send-off mass celebrated by Msgr. Rufino J. Santos, Archbishop of Manila, this morning in the Malacañang chapel.

Present at the mass were Justice Secretary and Mrs. Jesus Barrera, Public Works Secretary and Mrs. Florencio Moreno, Defense Secretary and Mrs. Jesus Vargas, Agriculture Secretary and Mrs. Juan de G. Rodriguez, Budget Commissioner and Mrs. Dominador Aytona, General Services Secretary and Mrs. Alejandro Almendras, acting Education Secretary Daniel Salcedo, Health Undersecretary Rafael Tumbokon, Finance Secretary and Mrs. Jaime Hernandez, General Alfonso Arellano, NEC Chairman Jose C. Locsin, Social Welfare Administrator Amparo Villamor, Executive Secretary Juan C. Pajo, NSDB Chairman Paulino J. Garcia, Assistant Executive Secretary and Mrs. Enrique C. Quema, Mrs. Felixberto Serrano, and close friends and relatives of the presidential family.

After the mass, breakfast was served in the family dining room of Malacañang.

During the breakfast, Msgr. Santos informed President Garcia about the Solemn inauguration of the Manila Cathedral and the arrival of the Papal Legate, His Excellency, Gregory Peter XV Cardinal Agagianian.

From Malacañang, President Garcia motored to the residence of Dr. Jose P. Laurel in Mandaluyong, Rizal, to visit the Batangas statesman who had recently suffered a stroke.

The Chief Executive greeted Dr. Laurel, who was confined in bed and wished him a speedy recovery. Dr. Laurel thanked the President for his visit and expressed his concurrence in the objectives of President Garcia's state visit to Japan.

President Garcia left the residence of Dr. Laurel at 10:15 a.m. and proceeded to his Bohol Avenue residence, where he plunged into work clearing his desk of pending state papers preparatory to his departure for Japan early tomorrow morning.

December 1— PRESIDENT and Mrs. Garcia enplaned early this morning for a five day state visit to Japan amidst the cheers and well-wishes of thousands who went to the Manila International Airport to see them off.

In a brief extemporaneous speech at the airport, the Chief Executive exhorted the people to "consign to oblivion whatever hatred and rancor had been aroused in us during the bitter years of the war."

He said that as a country dedicated to world peace, the Philippines has declared that we will stand behind every move to further the cause of peace in this part of the world.

The President expressed his sincere belief that "we should show to the world and to Japan that, as we have not been beaten on the battlefields in the time of war, we will not be beaten in the show of magnanimity in peace."

He urged the people "to close forever the dark chapter in our history resulting from the outbreak of hostilities 17 years ago and enter into a new era of friendship with Japan, one of cooperation and faith, to our mutual advantage."

President Garcia said the "governments of the world look with favor on his mission to Japan as one step towards the furtherance of peace and good will among nations."

After thanking members of the diplomatic corps and the large crowd for coming to see him off and wish him success, and *bon voyage,* President and Mrs. Garcia shook hands with the people and slowly made their way to the chartered PAL Viscount plane that would carry them on this historic trip to Japan.

Earlier, the President held last-minute conferences in Malacañang with members of his Cabinet, among them, Executive Secretary Juan C. Pajo, whom he had designated as "caretaker" of the government in his absence.

President and Mrs. Garcia left Malacañang at 6:15 a.m. after receiving and acknowledging the farewells and well-wishes of ranking officials of the government, close friends, and relatives of the family.

Preceded by an escort of Manila motorcycle cops, the presidential motorcade passed along Aviles, Sanchez, Ayala Boulevard, Taft Avenue, San Luis, Dewey Boulevard, and turned left to the Manila International Airport.

All along the route taken by the motorcade, pedestrians, motorists, and early-morning strollers stopped to wave good-bye to the President.

At the Pasay City boundary, near the corner of Dewey Boulevard and Vito Cruz, the motorcade was met and joined by a large delegation of officials and residents of Pasay City and nearby municipalities.

Among those on hand to greet the President on his arrival at the airport were Vice-President and Mrs. Diosdado Macapagal, members of the diplomatic corps led by Mons. Egidio Vagnozzi, ranking officers of the Armed Forces, and a composite honor guard battalion composed of elements from the different branches of the Armed Forces.

After saluting the colors and acknowledging the 21 gun salute given by an artillery battalion of the AFP, President Garcia reviewed the honor guard escorted by acting Senate President Fernando Lopez, Speaker Daniel Romualdez, and Lt. Gen. Alfonso Arellano, AFP chief of staff, while an aerial cover of six PAF F–80 Sabrejet planes roared overhead.

President and Mrs. Garcia boarded their plane at 6:57 a.m. after pausing briefly at the ramp to wave good-bye to the crowd.

At exactly 7:05 a.m., the four-engined Viscount taxied out to the runway preparatory to taking off for Okinawa, their first and only stop on the way to Tokyo.

PRESIDENT Garcia, in a dark woollen suit, with a Homburg hat to match, landed at 4:17 p.m. today at the Haneda airport, Tokyo, to be accorded one of the most lavish receptions in the Japanese capital.

The President was accompanied by the First Lady and a host of other government officials and three security officers.

Press dispatches from Tokyo said that virtually the entire royal family and practically every foreign diplomat in Japan was on hand to greet the visiting Philippine President.

The President and his party landed from a chartered Philippine Air Lines Viscount plane which took off five minutes behind schedule at the domestic airport in Manila this morning.

Mrs. Garcia wore a fur coat to protect herself against the gusty chilly winds which swept across the airport as the presidential party landed.

After the ceremonies at the Haneda airport, the President and Emperor Hirohito boarded an ancient maroon Mercedes Benz which was said to be 30 years old.

Conspicuous among the spectators who had jammed the airport to witness the arrival of the President was a streamer which read, "Mabuhay President Garcia."

Crown Prince Akihito was the first member of the royal family to be at the airport. Emperor Hirohito and Empress Nagako followed a few minutes later. With the Emperor were Prince Yoshi, Prince Hiatsu, Prince Mikasa, Prime Minister Nobusuke Kishi, and other members of the royal family.

President Garcia was introduced to Prince Akihito. No report was available in Manila this evening on the meeting between the President and the crown prince.

From the airport, the President led a motorcade to the *Geihinkan,* the Japanese Guest House.

A few minutes after arriving at the *Geihinkan,* the President delivered his message over TV and radio.

IN THE EVENING, the President and members of his party attended an informal dinner.

From Manila, the PAL Viscount touched down at Naha for refuelling and engine check-up. Reports said that the trip was uneventful.

December 2—PRESIDENT Garcia today broke centuries-old tradition in Japan when he addressed the joint session of the Japanese Diet.

It was the first time a foreign head of state had addressed the two chambers of the Japanese Diet.

Previous plans called for a mere reception by the members of both Houses of the Japanese parliament in honor of the visiting Philippine Chief Executive.

In his address the Philippine President called for lasting friendship between the Philippines and Japan. He said that there was still lingering "ill-will" in the Philippines because of the Japanese occupation of the country.

In his first morning in the misty and cold Tokyo weather, the President and the First Lady boarded the imperial coach from the Guest House (*Guinhinkan*) to start his scheduled call on the Emperor.

The First Couple called on Emperor Hirohito and Empress Nagako at the Imperial Palace. They were guided by the Emperor's younger brother, Prince Mikasa.

Emperor Hirohito, who was waiting for the presidential coach at the foot of the stairs, showed them to the third floor which houses the imperial suite. They met there Empress Nagako and Crown Prince Akihito.

Emperor Hirohito and the Empress later returned the visit. Governor S. Yasui of Tokyo also went to the Guest House to present the key of the world's largest city.

In accepting the symbolic key to the city, the President said he would treasure it as a symbol of the growing friendship between the two countries.

After an intimate luncheon at the Guest House, the President went to the Diet, where he was greeted by Speaker Hosjima and Matsumo and the chairmen of the various committees.

From the Diet, the President broke off his itinerary and paid an unexpected visit to the downtown Philippine press headquarters set up to coordinate information on his state visit to Japan.

The President and Mrs. Garcia and their official party went from the Diet to the Nikkatsu Hotel to inspect the offices of the Reparations Mission.

From the Nikkatsu Hotel, the President attended the joint reception given by the governor of Tokyo and the president of the Philippine Society of Japan.

In the evening the President and the First Lady attended an imperial banquet and reception at the Imperial Palace.

December 3—PRESIDENT Garcia today went through the third day of his six-day state visit of Japan, drumming harder on his theme to "cast into oblivion" the rancor and hatred that has characterized the post-war relations between the peoples of the Philippines and Japan.

In the morning the President left for Yokohama, a city near Tokyo, to visit the Mitsubishi Dockyard.

Inspecting the shipyard, the President saw a vessel earmarked for the Philippines, under the reparations program being constructed.

He also visited a bamboo factory and talked to the workers and officials.

Jokingly, the President said in one that of his light moments, that he hoped that the Japanese Government had revoked its order for his arrest.

The President, a guerrilla leader, had been hunted by Japanese forces in Leyte and Bohol.

He recalled that the Japanese Imperial Forces in the Philippines had placed a price of ₱10,000 on his head.

Although he was a guerrilla leader, the President said he did not demand official recognition to collect his backpay.

Reports reaching Manila said that while the President was kept busy by a tight schedule and went through the process of switching ties four times, the First Lady, Mrs. Leonila D. Garcia, made the rounds of a Japanese department store where she admired Christmas gifts on display.

The First Lady also sampled the Japanese food, and saw a hospital and an orphanage.

Mrs. Garcia also addressed the nation on television—the first lady to make such a nation-wide speech on television.

The First Lady joined the President in seeking a more substantial reconciliation between the two peoples, saying that both nations should "live in peace and grieve no more because of war."

President Garcia also addressed the Foreign Correspondents' Club.

During the press conference, the President came out openly against devaluation and said the low dollar reserves do not show any indication of economic deterioration.

President Garcia also visited the Philippine embassy residence, where he was received by Ambassador and Mrs. Manuel A. Adeva.

An hour later, President Garcia attended a tea party given at the National Press Club of Japan.

IN the evening, the President and Mrs. Garcia honored Emperor Hirohito and Empress Nagako with a banquet.

After the reception, the President and Mrs. Garcia and the members of their party were scheduled to board a special presidential plane, leaving Tokyo at 11:20 p.m. for Kyoto, Nara, and Osaka.

The President and members of his party will spend the night in a sleeper train.

THE President, before leaving on his state visit to Japan, issued Proclanation No. 548, declaring the period from December 7 to 13, 1958, as Government Employees Week.

The Chief Executive issued the proclamation in order to focus attention on the invaluable services rendered by government employees and thereby encourage them to achieve greater efficiency in public service.

The President called upon all citizens and residents of the country as well as schools and civic organizations to turn their thoughts to the honest, loyal, and devoted government employees in grateful appreciation of their services.

The President said the week should be devoted to the attainment of maximum efficiency, harmony, and cooperation between the public and the employees.

THE CABINET this afternoon voted to adopt further retrenchment measures to avert an expected deficit of ₱73.8 million in the current budget.

Meeting without President Garcia, the Cabinet today adopted a four-point measure calculated to trim further the authorized expenditures of various government offices.

The Cabinet action was prompted by a report of Budget Commissioner Dominador Aytona that the government collections from the Bureau of

Internal Revenue and the Bureau of Customs have failed to reach the estimated income to cover up the authorized expenditures.

Aytona reported that this year's income showed a sharp reduction amounting to ₱73.8 million.

Malacañang sources said the Cabinet previously had agreed to adopt retrenchment measures, as the government was heading toward a huge overdraft amounting to ₱486 million.

However, in a previous meeting, the Cabinet authorized to freeze other projects in an effort to avert the expected deficit.

In the resolution unanimously adopted this evening, the Cabinet voted that:

(1) All savings in the appropriations or balances of allotments of the various departments which have not been obligated as of November 30 this year should be frozen;

(2) The secretary of finance, the budget commissioner, and the auditor general would constitute a committee to review the items of expenditures of the various departments to determine which items should be deferred, report of which to be submitted to the Cabinet with the fiscal officers of each previous consultation with each department;

(3) A memorandum should be prepared jointly by the committee on the financial condition of the government for submission to members of Congress through the Senate President and Speaker of the House of Representatives, as well as to members of the Cabinet; and

(4) The Tax Advisory Board under the chairmanship of the Secretary of Finance should be convened so that it can prepare recommended reforms in the tax system for submission to Congress in its next regular session.

Aytona submitted a two-page report of the "critical financial condition" of the government.

It was indicated that despite the retrenchment measures previously adopted to head off the expected deficit amounting to ₱486 million, the government was on the brink of another huge overdraft of ₱73.8 million.

This imbalance between the authorized expenditures and the income was disclosed in statistics submitted to the Cabinet by Aytona.

The budget commissioner said the government had expected a total collection of ₱806.4 million. However, latest reports indicated that the government might be able to collect only ₱732.6 million.

Aytona previously explained that the budget had authorized expenditures roughly amounting to ₱1.2 billion.

However, owing to the non-passage of the recommended tax measures in the last session of Congress, the Cabinet decided to freeze financing of new projects in an effort to make the government operate within its expected income of ₱806.4 million.

The budget commissioner reported to the Cabinet that figures reaching his office indicated that the expected income of ₱806 million may not be covered, thus forcing a vacuum of ₱73.8 million after the Cabinet had deferred authorized expenditures amounting to ₱486 million in its previous meeting.

Aytona said the customs collections registered the biggest drop in expected revenues and recorded a total of ₱68.4 million from its expected income.

He also said the BIR collections toppled from the expected figure of ₱411.7 million to ₱405.8 million, representing a decrease of ₱5.9 million.

At the meeting this afternoon, the Cabinet also agreed to release ₱118,028 from whatever savings the Defense Department might have made for the use of the intelligence unit of the Armed Forces of the Philippines.

Defense Secretary Jesus Vargas asked the Cabinet to authorize the release of five per cent of its reserves intended for the intelligence arm of the Army in an effort to strengthen the undercover work of the AFP.

Vargas pointed out that the failure of the Army to track down the activities of top Communist leaders is due to the lack of appropriations of the intelligence force of the Army.

He told a Cabinet member who had questioned the defense head on its apparently "weak" intelligence network "that if the AFP is given the recommended amount, it would now guarantee a strengthened and efficient intelligence work.

Vargas said "the Saulo case will not be repeated."

At the same time, the Cabinet endorsed the disbursement of some ₱2.5 million from the reparations funds for the purchase of materials for the construction of prefabricated school building.

The Cabinet merely endorsed the bid of Lt. Gen. Alfonso Arellano, chief of staff of the Armed Forces and concurrently chairman of a Cabinet committee to study ways and means of securing additional buildings to accommodate the expanding enrollment in the primary schools.

Arellano had recommended the release of ₱5 million from the reparations funds. The Cabinet, however, endorsed the release of only ₱2.5 million.

Malacañang explained that the Cabinet merely endorsed the release of the amount, as the final action of the disbursement of amounts from reparations rests with the reparations commission.

December 4—VISITING Philippine President Garcia today went on a sightseeing tour of southern Japan.

Taking a sleeper train from Tokyo last night, the President and the First Lady arrived in Kyoto at 9:30 o'clock this morning

Reports reaching Manila said that Kyoto gave the visiting Philippine Chief Executive a rousing welcome. An estimated 3,000 schoolchildren cheered and waved Japanese and Philippine paper flags when President Garcia arrived at the Kyoto station.

The President found the ancient Japanese city shrouded in a dense fog. The air was chilly.

Arriving at Kyoto, the President and members of his party toured three of the city's major sightseeing spots.

During the course of his tour, the President told newsmen: "I am propoundly impressed by these monuments of Japanese culture. They bespeak the old splendor and grandeur of ancient Japanese times. There is no parallel to this in the world," the President said.

President Garcia rested at the Miyako Hotel, and later boarded a special train en route to Nara.

At Nara the President viewed the famous park where deer were roaming freely.

The President also visited the Heian Shrine, a compound of brilliant orange-colored Shinto buildings in Kyoto.

In front of the altar, the President dug into his pockets for some coins and tossed them into a well. Commerce Secretary Pedro C. Hernaez gave the President some five 10-yen pieces.

After tossing the coins, President and Mrs. Garcia, true to the Japanese traditions, bowed slightly before the Shinto altar.

From Kyoto, the President boarded the special train at 12:57 p.m. and left for Nara. He arrived at Nara an hour later.

At Osaka the President gave a press conference to Japanese newspapermen and foreign correspondents.

IN the evening the President and the First Lady attended a reception given by the Osaka mayor and the president of the Chamber of Commerce at the New Osaka Hotel.

Later in the evening, the President attended an informal Japanese dinner given by the Philippine consul at the city.

President Garcia and the members of his party were scheduled to sleep at the New Osaka Hotel.

EXECUTIVE Secretary Juan C. Pajo administered the oath of office to Commissioner Amado del Rosario of the Bureau of Civil Service as member

of the board of trustees of the Government Service Insurance System in a ceremony held today in Malacañang.

With the induction of Del Rosario, the membership of the GSIS board of trustees is now complete. Composing the board are Gregorio S. Licaros, chairman; Capt. Rodolfo P. Andal, vice-chairman; Col. Vicente O. Tiongson, Martin Aguilar, Jr., and Del Rosario, members.

Del Rosario takes over the position left vacant by Casimiro Dacanay whose term of office expired recently.

December 5—PRESIDENT Garcia formally ended his state visit to Japan this evening by attending a dinner given by Prime Minister and Mrs. Kishi at their residence in Tokyo. He is flying home tomorrow.

The social affair, which was climaxed by a communique, ended President Garcia's successful state visit to the former enemy country.

The President spent almost the whole day aboard the train which took him and the members of his party back to Tokyo from Osaka.

He boarded the special presidential plane at 8 o'clock this morning.

The President stayed overnight at the New Osaka Hotel, where he addressed the members of the chamber of commerce of the city this evening.

President Garcia and the members of his party had lunch aboard the special train.

He arrived at the Tokyo station at 4:07 p.m. and immediately plunged into a conference with Premier Kishi.

Reports said the Garcia-Kishi conference lasted for 40 minutes and discussed the possible cooperation of the two governments for the economic development of both countries.

Upon his arrival at Tokyo, reports said, "only a handful of Japanese and Philippine officials, plus a few policemen and railway workers, were on hand to greet the President."

However, an estimated 1,000 office workers and businessmen were said to have lined up outside the station to watch the President drive off in the Emperor's Rolls-Royce limousine.

When the maroon-colored Imperial train ground to a halt and the President debarked, a 13-year-old Japanese school girl named Seki Atsugi handed him a brocaded Japanese doll. Seki is the daughter of a Japanese official.

While the President was busy winding up his state visit in Japan, Executive Secretary Juan C. Pajo, concurrently "caretaker" of the government, presided over the weekly Malacañang press conference.

December 6—PRESIDENT Garcia this afternoon returned from a five-day state visit to Japan and was accorded an enthusiastic welcome at the Manila Domestic Terminal and along the route to Malacañang by people from Manila, Pasay and Quezon cities, and neighboring provinces.

The Chief Executive later at Malacañang said he was extremely grateful to the Emperor and the Empress of Japan, as well as the members of the Imperial household, high Japanese officials, and the Japanese people who went out of their way to make his visit successful.

In going out of their way, the Emperor and the Japanese people showed their desire to bring about the restoration of the old friendship and esteem between the Philippines and Japan, the President said.

Speaking about his state visit, the President also said that it has broken tradition. The Emperor and the Empress broke precedents when they welcomed the President, and the Japanese Diet also broke a precedent when it allowed the President to speak before its members.

The PAL Viscount bearing the President and his party arrived at the Manila Domestic Terminal at 4:30 p.m., escorted by a flight of PAF jet planes.

The President and Mrs. Garcia were immediately greeted by Vice-President Diosdado Macapagal, Acting Senate President Fernando Lopez, Speaker

Protempore Constancio Castañeda, Chief Justice Ricardo Paras, and Executive Secretary Juan C. Pajo.

After greeting the chiefs of diplomatic missions, members of the Cabinet and Congress, and provincial executives and city mayors, the President, escorted by Lt. Gen. Alfonso Arellano, AFP chief of staff, proceeded to a platform to receive full military honors.

Then the President and Mrs. Garcia proceeded to a stage where the Most Reverend Hernando Antiporda, D. D., Auxiliary Bishop of Manila, sang a *Te Deum* assisted by the choir of the Christ the King Seminary.

After the *Te Deum*, President Garcia spoke before the welcoming crowd and expressed his gratitude for the warm welcome.

The President said he was happy to report to the Filipino people that in Japan there is incontestible evidence of the desire of the people and government to be fully reconciled with the Filipinos, and to forget what had happened in the past and face the future together.

The President also reported that the Japanese high officials have agreed to furnish the Philippines within the framework of the reparations agreement with facilities with which to construct the Marikina multipurpose project and a nationwide telephone system.

He concluded his short speech by saying that he was happy that in a modest way he had done something to promote goodwill and friendship between the two nations.

The President also thanked members of the diplomatic corps whose presence at the domestic terminal, he said, showed their interest in the promotion of international peace and goodwill.

After his speech, the President boarded an open car and, with the members of his party and the welcomers, headed a motorcade to Malacañang.

Thousands of people lined all along the route of the presidential motorcade from the airport to Malacañang. The President had to stand on the open car throughout the way to acknowledge the cheers of the people.

EXECUTIVE ORDERS, PROCLAMATIONS AND ADMINISTRATIVE ORDERS

MALACAÑANG

RESIDENCE OF THE PRESIDENT
OF THE PHILIPPINES
MANILA

BY THE PRESIDENT OF THE PHILIPPINES

PROCLAMATION NO. 547

DECLARING THE FIRST WEEK OF JANUARY, 1959, AS ACCOUNTANCY WEEK

WHEREAS, accountants, by reason of the vantage position they occupy in the field of business, finance, and industry, have contributed immensely to the progress of the national economy; and

WHEREAS, it is desirable that the important role played by accountants in the development of the national economy be brought to the attention of the people;

NOW, THEREFORE, I, Carlos P. Garcia, President of the Philippines, by virtue of the powers vested in me by law, do hereby declare the first week of January, 1959, as Accountancy Week and designate the Philippine Institute of Accountants to take charge of its celebration.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the seal of the Republic of the Philippines to be affixed.

Done in the City of Manila, this 28th day of November, in the year of Our Lord, nineteen hundred and fifty-eight, and of the Independence of the Philippines, the thirteenth.

[SEAL]

CARLOS P. GARCIA
President of the Philippines

By the President:

JUAN C. PAJO
Executive Secretary

82602

REPUBLIC ACTS

H. B. No. 1780

[REPUBLC ACT No. 2093]

AN ACT APPROPRIATING FUNDS FOR PUBLIC WORKS AND FOR OTHER PURPOSES

Be it enacted by the Senate and House of Representatives of the Philippines in Congress assembled:

SECTION 1. The following sums or so much thereof as may be necessary are hereby appropriated out of the general funds in the National Treasury not otherwise appropriated, subject to the provisions hereinafter set forth, for the purposes mentioned hereunder:

[Itemized portions omitted due to lack of space]

SEC. 2. *Apportionment of Portworks Special Fund.* The following sums or so much thereof as may be necessary are hereby apportioned out of the Portworks Special Fund that have accrued under Act No. 3592 as amended by Commonwealth Act No. 130 and by Republic Act No. 1216, not otherwise apportioned, to be released by the Secretary of Public Works and Communications pursuant to the provisions hereinafter set forth and for the purposes mentioned hereunder:

[Itemized portions omitted due to lack of space]

SEC. 3. The following sums or so much thereof as may be necessary are hereby appropriated in consonance with Republic Act Numbered 1789, subject to the provisions and for the purposes hereunder set forth;

(*a*) For the prefabrication of materials into school-room units for elementary school buildings, including the purchase or necessary spare parts, tools, materials other than lumber, and supplies and the erection thereof: *Provided,* That the President of the Philippines may authorize the pre-cutting and crating of school-room units by contract thru public bidding with operators of private sawmills or lumber yards in every Congressional District of the Philippines, where the capacity of such sawmills or lumber yards is adequate, to handle contracts amounting to not more than ₱20,000 at one time, in which case the school-room units so produced shall be allocated in accordance with the proportion established in Republic Act No. 836 as amended ..... ₱5,000,000.00

(*b*) For the partial implementation of the remaining phases of the elementary school building program provided in Republic Act No. 836 as amended ..... ₱5,000,000.00

(*c*) Reparations goods for the dredging phases of river control and seaports projects, especially in Mindanao ..... ₱5,000,000.00

SEC. 4. *Program of Work Required before Prosecuting Public Works.*—Before prosecuting any public works, the

district, city or project engineer concerned shall prepare, and secure competent approval thereof, a program of work which shall include among other things the total cost of materials and labor required, the anticipated duration of the work in men-days, the margin of contingencies above his estimates if the work is to be undertaken by administration, and in addition, an estimate of what he deems as a reasonable profit for the contractor if the work is to be undertaken by contract. In no case, however, may this margin of contingencies be more than ten per cent of the cost of the work nor the allowance for profit be more than ten per cent. For work being undertaken by administration, the engineer concerned may, however, be allowed to submit a revised program of work before the completion of the project if, due to unforeseen rise in price of materials or to changes in field conditions or to other such circumstance, it becomes evident that the allowance for contingencies is not sufficient to absorb the increase and, therefore, he cannot successfully accomplish the work according to his original program. With the exception of projects the estimated cost of any of which is ten thousand pesos or less, under no circumstance shall the District or City or Project Engineer start work without first securing approval of the corresponding program of work from the Head of the Bureau or Office concerned or from the latter's duly designated representative, and no program of work for any project which requires special site investigation, survey and construction plans shall be approved unless such plans are used as basis of the program. The Auditor General or his authorized representative shall be furnished a copy of the program of work for his guidance and shall have access to the data on which the program was based.

SEC. 5. *Recognition of Civic Organizations in the Prosecution of Community Improvement Projects.*—Whenever the appropriation amounting to not more than fifteen thousand pesos for any project authorized in this Act is released and made available for expenditure, wholly or partly, such project may be undertaken by administration, the provisions of existing laws or regulations to the contrary notwithstanding.

When any such project does not require complicated methods of construction or highly specialized techniques, it may be awarded through a negotiated contract to the most concerned civic organization in the locality which has filed an application therefor in the manner herein provided. The application shall be filed by the organization concerned with the District Engineer or his official counterpart, as the case may be, specifying, among other things, the payment to be received for the work. After evaluating the offer and the terms proposed by comparing them with the corresponding program of work and estimate, the project may be awarded by the official concerned to the applicant through a negotiated contract for an amount not to exceed ninety percent of the cost of the work as originally estimated and programmed pursuant to section four of this act. In case two or more civic organizations offer to undertake the project, the official concerned shall award the contract to the organization offering the lowest quotation, determined by sealed bidding to be opened in the municipal building of the municipality

where the project is located within ten days, but not earlier than seven days, after notice of such bidding is posted on the public Bulletin Board of said municipality: *Provided,* That, in prequalifying bidders and awarding contracts, no bid nor performance bonds will be required.

The authority of the District Engineer or his official counterpart to undertake any work by administration or through negotiated contract as herein provided for shall be deemed to have been duly secured upon receipt by the Provincial or City Auditor of the official advice to the head of the bureau or office concerned to so prosecute the work.

Under no circumstance shall the provisions of this section be construed to deprive the District Engineer or his official counterpart, as the case may be, of his supervisory control over any of the projects referred to in this section nor to relieve him of any responsibility, administrative or otherwise, for any defect in procedure, control or technical surveillance, resulting in waste of money, destruction of, or damage to, property or lowering of engineering standards. In cases where the work is undertaken through negotiated contract with a civic organization, the District Engineer, or his counterpart, may not charge against the fund of the project any expense for inspection by him or his assistant but he may designate as his representative and assign to the project as worker-inspector any competent craftsman whose compensation and travel expenses for the duration of the assignment shall be chargeable against the funds of the project but not against the contract and shall not exceed one percent of the contract price. The District Engineer, or his official counterpart, may make any other suitable arrangement to enable him to maintain supervisory control over the project without however exceeding the compensation limitation herein imposed.

SEC. 6. *Prohibition in Use of Sums Appropriated herein.*—No appropriation herein authorized shall be used to pay obligations or overdrafts previously incurred, nor be made available for the purchase of office equipment, supplies and automobiles or station wagons, nor be used to pay salaries of employees except those directly engaged in the work or assigned officially to projects and as specifically provided in Title I, Section one of this Act: *Provided,* That the rates of compensation shall not be higher than those authorized under the General Appropriation Act for the same rank or position in the Bureau concerned.

SEC. 7. *Suspension of Work Done by Administration Before General Elections.*—The provisions of any existing law to the contrary notwithstanding, regardless of the source of funds, within forty-five days before every general election, no laborer shall be employed or money spent in any public works project even if the money is actually released before or within such period except for:

(*a*) Ordinary maintenance work on existing and/or completed public works projects: *Provided,* That there is no increase over the number of usual laborers or employees employed therein sixty days prior to the beginning of this forty-five-day period: *Provided, further,* That no extra gang of laborers are employed within the said period of forty-five days;

(*b*) Work undertaken by contract through public bidding held before the forty-five-day period: *Provided,* That work for the purpose of this section undertaken under the so-called "takay" or "paquiao" system shall not be considered as work by contract;

(*c*) Payment for the usual cost of preparation of working drawings, specifications, bills of materials, estimates, and other procedures preparatory to actual construction, including the purchase of materials and equipment, and all incidental expenses for wages of watchmen and other laborers employed for such work in the central offices and field storehouses before the beginning of such period: *Provided,* That the number of such laborers shall not be increased over the number hired when the project or projects were commenced;

(*d*) Emergency work necessitated by the occurrence of a public calamity, but such work shall be limited to the restoration of the damaged facility and shall further be limited to funds available for maintenance.

SEC. 8. *Payment of Labor and Readjustment of Contracts.*—All contracts for the furnishing of materials or supplies and for the construction of any project authorized in this Act executed by any person, association or corporation with the government shall contain provisions adequately covering the following:

(*a*) The contractor shall provide and have on hand every payday, in addition to the usual requirement of cash outlay for the prosecution of the contract work, a labor fund in an amount sufficient to cover each fifteen-day labor payroll for the project and payment to the laborers and employees shall be made within three days after the end of every pay period. Payment of wages and salaries to laborers and employees engaged in the project shall be witnessed by the engineer incharge of the work or his representatives, who shall certify to such payment. Upon failure of the contractor to pay his laborers and employees within the period herein stated, the government shall forthwith make such payment out of the funds of the project, in which case the sum paid out plus a surcharge of one per cent shall be deducted from any amount due or to become due the contractor without prejudice to the right of the government to rescind the contract.

(*b*) Should the government, at any time during the effectivity of a contract, impose, abolish, modify any tax, custom duties, license, impost, fee or other similar charges, or enact, amend or repeal any law affecting the number of hours of labor permissible a day or the number of days a week or the wages or salaries to be paid to laborers and employees, which would directly increase or decrease the cost of materials or the cost of the construction work beyond or under the amount stipulated in the contract, the contract amount shall be readjusted accordingly by a committee, hereby created for this purpose, composed of the Auditor General as Chairman, the Secretary of Public Works and Communications and the Commissioner of the Budget as members: *Provided,* That the party seeking adjustment shall first apply for same in writing, stating therein the reasons justifying the change as well as the data and computations in sufficient detail which would determine accurately the amount of the change.

SEC. 9. *Preference to Local Labor.*—In the execution and construction of community projects and of school building projects, preference shall be given to laborers from the place or municipality where the project is being undertaken.

SEC. 10. *Use of Excess Funds.*—Whenever any school building project or other community project is completed and a balance of appropriation remains, the district or city engineer, as the case may be, may use such balance for the purchase or acquisition of essential school equipment or for any urgent improvement work within the school premises and for covering deficiency of appropriation of any project of the same category within the municipality.

SEC. 11. *Publication of Call for Bids in Newspaper Sufficient.*—Any law, rule or regulation to the contrary notwithstanding, in the calling for bids, as required by law, for the execution of any project with appropriation in this Act or in any of the previous Public Works Acts, advertisement thereof in any newspaper of general circulation in Manila and/or the locality, or province, or region where the project is located is sufficient compliance to the pertinent provisions of the Revised Administrative Code.

SEC. 12. *Purchase of Project Sites Included in Appropriation.*—Unless otherwise specified in the project item, appropriations herein authorized for any construction of project shall be understood as including the acquisition or purchase of sites if such acquisition or purchase is impliedly necessary for the prosecution and completion of the project.

SEC. 13. *Engineering Surcharges.*—Any provision of law, rule or regulation to the contrary notwithstanding, no national surcharge shall be collected from the appropriations or expenditures authorized in this Act; and provincial surcharge on appropriations or expenditures provided herein shall not exceed two per cent.

SEC. 14. *Public Works Appropriations under This Act Are National Disbursing Funds: Exceptions.*—Any provision of existing law to the contrary notwithstanding, all funds appropriated under the provisions of this Act shall, when released, be carried in the account books of the treasurers as national disbursing funds and all the projects herein specified are classified as national projects unless such funds are appropriated specifically as aid to the provinces, chartered cities and municipalities, as the case may be: *Provided,* That provincial funds allocated as counterpart shall not be considered as national funds.

SEC. 15. Except for projects under paragraphs (*f*) and (*g*) of Title M and projects already started or continuing in character, the sums appropriated under this Act shall be released only after the appropriations under previous Public Works Acts have been released: *Provided,* That appropriations released for paragraph (*f*) of Title "M" of section one shall be prorated to all Congressional Districts and made available simultaneously.

SEC. 16. *Rental of Equipment.*—Rental of equipment shall not be deducted at the time of the release of funds for public works or ever in anticipation of use of the

equipment but shall be paid based on actual use: *Provided,* That no rental shall be charged or collected for use of equipment on any project authorized under this Act or under previous Public Works Acts when undertaken by administration.

SEC. 17. All appropriations under Republic Act Numbered Nine hundred and twenty remaining unreleased upon the approval of this Act are repealed.

SEC. 18. Any violation of any provision of sections four, six, seven, and fifteen of this Act shall be a crime punishable with imprisonment from six months to six years and a fine of from five hundred to five thousand pesos; if the offender is a public officer or employer, he shall be, in addition to the above penalty, be dismissed from the service with prejudice to reinstatement and deprived of all retirement benefits and privileges.

SEC. 19. *Reports.*—Thirty days before the opening day of every regular session of Congress, the proper Department Head shall make a report to both Houses of Congress and to the President, in printed and bound form, which shall include the appropriations unexpended balances, unreleased portions of said appropriations as of date of said report and the percentage of work accomplished and work yet to be done to accomplish the program of broad categories of public works including his recommendations, if any, for transfer of appropriations or for program changes to be incorporated in the next Public Works Appropriation Act: *Provided,* That report on individual projects incorporating the aforementioned data will be supplied whenever deemed relevant.

SEC. 20. This Act shall take effect upon its approval.

Approved, July 7, 1958, except sections 15, 16 and 18 and the following provisions of subsection *f,* Title M, section 1: "*Provided,* That the various appropriations for the different projects under this subsection *f* shall, upon formal written request by the representative of the district where such project or projects are located, be partially or wholly allocated by the Secretary of the Department of Public Works and Communications to cover new or different projects as may be indicated by said representative in said written request: *Provided, further,* That the same shall apply to community projects in Republic Acts Nos. 1613 and 1900."

DEPARTMENT AND BUREAU ADMINISTRATIVE ORDERS AND REGULATIONS

Executive Office

MEMORANDUM CIRCULAR No. 20

November 24, 1958

ENJOINING STRICT OBSERVANCE OF THE PROHIBITION AGAINST INFLUENCE AND PRESSURE IN MATTERS OF APPOINTMENT AND PROMOTION OF EMPLOYEES.

To all Departments, bureaus and offices of the Government, including government-owned or controlled corporations and the local governments.

It has been brought to the attention of the President that employees in the classified service have been resorting to the practice of soliciting recommendations for promotion in violation of the following provisions of Section 5 of Civil Service Rule IX:

"No recommendation of any person for promotion, whether verbal or in writing, shall be received or considered unless it be made by the officer or officers under whose supervision he is or has been employed, and the presentation of any other recommendation shall be considered an unwarrantable interference with the public service; *and such a recommendation made at the solicitation or with the knowledge or consent of the employee shall be sufficient cause for debarring him from the promotion proposed, and a repetition of the offense shall be sufficient cause for removing him from the service.*" (Italics supplied.)

The purpose of the above rule is to ensure that the Merit System as embodied in the Constitution is observed in the evaluation of the fitness of employees for appointment or promotion in the classified service. Any disregard of the rule adversely affects morale and efficiency in the service.

In order to maintain a high level of morale and efficiency in the classified service, the President directs that the prohibition against undue pressure or influence in matters of appointment and promotion is provided in Section 5 of Civil Service Rule IX above-quoted be strictly observed and that appropriate disciplinary measures be taken against employees violating the same.

By authority of the President:

JUAN C. PAJO
Executive Secretary

Department of Justice

OFFICE OF THE SOLICITOR GENERAL

ADMINISTRATIVE ORDER No. 151

October 15, 1958

APPOINTING SPECIAL COUNSEL RUFO L. VENUS IN THE OFFICE OF THE PROVINCIAL FISCAL OF AKLAN AS ACTING PROVINCIAL FISCAL OF SAID PROVINCE.

In the interest of the public service and pursuant to the provisions of Section 1679 of the Revised Administrative Code, Mr. Rufo L. Venus, Special Counsel in the Office of the Provincial Fiscal of Aklan, is hereby appointed Acting Provincial Fiscal of Aklan with compensation provided by law for the position, effective during the leave of absence of the regular Provincial Fiscal from November 1, 1958 to November 30, 1958, or until further orders.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 152

October 21, 1958

APPOINTING SPECIAL COUNSEL FILOMENO J. SOTO IN THE OFFICE OF THE CITY ATTORNEY OF CABANATUAN CITY AS ACTING CITY ATTORNEY OF SAID CITY.

In the interest of the public service and pursuant to the provisions of Section 1679 of the Revised Administrative Code, Mr. Filomeno J. Soto, Special Counsel, Office of the City Attorney, Cabanatuan City, is hereby appointed Acting City Attorney of said City, effective upon assumption of office and to continue during the sick leave of absence of the regular City Attorney, or until further orders, with compensation provided by law for the position.

This cancels Administrative Order No. 146 of the Secretary of Justice, Series of 1958.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 153

October 21, 1958

DESIGNATING ATTY. JOSE A. NALDO OF THE DEPARTMENT OF LABOR TO ASSIST THE PROVINCIAL FISCALS OF CEBU, BOHOL, LEYTE, SAMAR AND NEGROS ORIENTAL.

Upon the request of the Secretary of Labor, in the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Atty. Jose A. Naldo, Regional Labor Administrator of the Department of Labor with assignment in the Eastern Visayas (Cebu City), is hereby designated to asisst the Provincial Fiscals of Cebu, Bohol, Leyte, Samar, Negros Oriental and the City Fiscal and Attorneys of Cebu, Dumaguete, Ormoc, Tacloban and Calbayog in the investigation and prosecution of all violations of labor laws, effective immediately and to continue until further orders.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 155

October 22, 1958

DESIGNATING SPECIAL ATTORNEY PERFECTO B. QUERUBIN OF THE DEPARTMENT OF JUSTICE TO ASSIST ALL THE PROVINCIAL FISCALS AND CITY ATTORNEYS IN MINDANAO, AND THE PROVINCIAL FISCALS OF SULU AND PALAWAN.

In the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Mr. Perfecto B. Querubin, Special Attorney in the Department of Justice, is hereby designated to assist all the Provincial Fiscals and City Attorneys in Mindanao, and the Provincial Fiscals of Sulu and Palawan, in the investigation and prosecution of all criminal cases filed by the President's Law Enforcement Unit for Southern Philippines (PLEUSP) created under Executive Order No. 293, dated April 10, 1958, effective immediately and to continue until further orders.

This amends Administrative Order No. 103, dated July 9, 1958, of this Department.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 156

October 27, 1958

AUTHORIZING HON. EMILIO BENITEZ DISTRICT JUDGE OF SAMAR TO HOLD COURT AT SALCEDO OR GUIUAN, SAMAR.

In the interest of the administration of justice and pursuant to the provisions of Section 56 of Republic Act No. 296, as amended, the Honorable Emilio Benitez, District Judge of Samar (Borongan Branch), is hereby authorized to hold court at Salcedo or Guiuan, same province, during the month of November, 1958, for the purpose of trying all kinds of cases and to enter judgments therein.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 167

November 7, 1958

DESIGNATING JUDICIAL SUPERINTENDENT EULALIO D. PICHAY AND ATTYS. LEONIDES DE LEON AND MARIAM MERCADO TO ASSIST THE UNDERSECRETARY OF JUSTICE IN THE INVESTIGATION OF THE GENERAL CONDITIONS EXISTING IN THE BUREAU OF PRISONS.

Administrative Order No. 165, dated November 5, 1958 of this Department is hereby amended to read as follows:

"In the interest of the public service, Mr. Eulalio D. Pichay, Judicial Superintendent, Messrs. Leonides de Leon and Mariano Mercado, Attorneys, this Department, are hereby designated to assist the Undersecretary of Justice in his investigation into the general conditions exisiting in the Bureau of Prisons, etc., pursuant to Administrative Order No. 79 dated June 10, 1958, and in the discharge of his duties as Acting Director of the Bureau of Prisons".

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 168

November 6, 1958

APPOINTING ATTY. CELESTINO SABALO OF THE BUREAU OF FORESTRY AS SPECIAL COUNSEL TO ASSIST ALL PROVINCIAL AND CITY FISCALS OR ATTORNEYS IN THE INVESTIGATION AND PROSECUTION OF VIOLATIONS OF FORESTRY LAWS.

Upon request of the Department of Agriculture and Natural Resources, in the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Atty. Celestino Sabalo of the Bureau of Forestry, is hereby apopinted special counsel to assist all Provincial and City Fiscals or Attorneys in the investigation and prosecution of violations of Forestry laws on illegal "caiñgin", in all cases subject to the direction and control of the Fiscals or Attorneys, without addition compensation,

effective immediately and to continue until further orders.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 169

December 12, 1958

DESIGNATING SPECIAL ATTORNEY EMILIO A. GANCAYCO OF THE PROSECUTION DIVISION TO ASSIST THE PROVINCIAL FISCAL OF RIZAL.

In the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Mr. Emilio A. Gancayco, Special Attorney in the Prosecution Division, this Department, is hereby designated to assist the Provincial Fiscal of Rizal in the reinvestigation of the charge for robbery against Calixto Alonzo and others, and prosecution of said case, if warranted, (Criminal Case No. 3550, JP, Makati, Rizal) effective immediately and to continue until further orders.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 170

November 19, 1958

DESIGNATING SPECIAL ATTORNEY ALEJANDRO E. SEBASTIAN OF THE PROSECUTION DIVISION TO ASSIST THE PROVINCIAL FISCAL OF ROMBLON.

In th interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Mr. Alejandro E. Sebastian, Special Attorney in the Prosecution Division, this Department, is hereby designated to assist the Provincial Fiscal of Romblon in the reinvestigation of the case involving the death of Francis Fernal and the prosecution of persons responsible thereto, effective immedaitely and to continue until further orders.

JESUS G. BARRERA
Secretary of Justice

ADMINISTRATIVE ORDER No. 171

November 21, 1958

DESIGNATING SPECIAL ATTORNEY EMILIO A. GANCAYCO OF THE PROSECUTION DIVISION TO ASSIST THE PROVINCIAL FISCAL OF LAGUNA.

In the interest of the public service and pursuant to the provisions of Section 1686 of the Revised Administrative Code, Mr. Emilio A. Gancayco, Special Attorney in the Prosecution Division of this Department, is hereby designated to assist the Provincial Fiscal of Laguna in the investigation, and prosecution if warranted, of the complaint for malfeasance in office filed by Mr. Pedro Esqueta and others against Mayor Jesus Garcia of Biñan, Laguna, effective immediately and to continue until further orders.

JESUS G. BARRERA
Secretary of Justice

Department of Commerce and Industry

RULES AND REGULATIONS, AS AMENDED, FOR THE ENFORCEMENT OF REPUBLIC ACT NO. 830

November 14, 1958

Pursuant to Section 3 of Republic Act No. 830, the rules and regulations promulgated on September 16, 1952, as amended on October 11, 1952 and October 1, 1957, is hereby further amended in order to facilitate and expedite the importation and re-exportation of goods imported under Republic Act No. 830, to read as follows:

1. A bona fide exhibitor in a forthcoming fair or exposition of the arts, sciences and industries in the Philippines, may file an application with the No-Dollar Office on a form prescribed and adopted by said office, to import or bring to the Philippines articles for display or exhibition in such fair or exposition.

2. No fees whatsoever shall be charged by the No-Dollar Import Office for the filing of any application to import or bring to the country articles from foreign countries under Republic Act No. 830.

3. A bona fide exhibitor is a person, corporation, firm or association who has been granted the lease of a space or lot within the area of a forthcoming fair or exposition for the purpose of displaying or exhibiting certain articles during said fair or exposition.

4. When a foreign government itself is a participant in a fair or exposition of the arts, sciences and industries in the Philippines, it may designate any of its diplomatic or consular officials to apply for the license to bring to the Philippines articles from said foreign country for display or exhibition in the fair or exposition.

5. The application shall be accompanied by a certificate from the Director-General or official in charge of a fair or exposition in the Philippines to the effect that the applicant is a bona fide exhibitor in said fair or exposition.

6. The certificate of the Director-General or official in charge of any fair or exposition shall

contain: the name of the exhibitor, his nationality, the kinds of goods to be exhibited by him as enumerated in his application for space in the fair or exposition, the date he applied for a concession, the date the application for concession was approved, the size of his concession, the payment he has made for the lease of space or lot, and the duration of the fair or exposition. The seal of the fair or exposition shall be affixed to the certificate. The fair or exposition shall furnish importers of articles under Republic Act No. 830 with proper stickers which shall be placed on the cases containing the exhibits in order to distinguish the articles from other imported goods.

7. Application to import or bring to the Philippines articles for display or exhibition in any fair or exposition in the Philippines under Section 1 of Republic Act No. 830 shall be referred by the No-Dollar Import Office with appropriate recommendation to the Secretary of Commerce and Industry. If said application is approved by the Secretary of Commerce and Industry, the No-Dollar Import Office shall issue the corresponding permit. A general license may be issued by the No-Dollar Office to any foreign government to bring to the Philippines the articles for display or exhibition enumerated in its application.

8. Any material misrepresentation in an application or in any of the papers supporting such application required by these rules and regulations shall be sufficient cause for the outright rejection of the application.

9. An exhibitor shall be allowed to import or bring to the Philippines under Republic Act No. 830 only a reasonable quantity of goods, such quantity to be determined on the basis of the size of his concession in the fair or exposition for which the goods are being imported and the nature of the exhibition.

10. As soon as any articles imported or brought to the Philippines for the purpose mentioned under Republic Act No. 830 are unloaded at a port of entry in the Philippines, the consignee shall furnish within seven days after the goods' arrival, the office of the fair or exposition, the Bureau of Customs, Bureau of Internal Revenue, No-Dollar Import Office, the Central Bank of the Philippines, and the Bureau of Commerce, with certified copies of the bill of lading and consular invoice for said goods. An inventory shall be made immediately upon arrival of the goods by the owner thereof in the presence of one representative each from the office of the fair or exposition, the Bureau of Customs, Bureau of Internal Revenue, No-Dollar Import Office, Central Bank of the Philippines, and the Bureau of Commerce.

11. Consignees of imported exhibits shall post a bond with the Collector of Customs of the port of entry in an amount equal to one and one-half times the ascertained duties, taxes and other charges on the articles imported. However, if the exhibitor is a foreign government, a letter from its consul or diplomatic representative in the Philippines guaranteeing payment of the duties and taxes, which may be imposed on the goods in the event that they are withdrawn for local consumption shall be sufficient.

12. At the termination of the fair or exposition for which the articles have been imported or brought to the Philippines, an inventory of the remaining goods shall be made by the exibitor or owner thereof in the presence of one representative each from the fair or exposition, the Bureau of Customs, Bureau of Internal Revenue, No-Dollar Import Office, Central Bank of the Philippines and the Bureau of Commerce.

13. All articles imported or brought to the Philippines under Republic Act No. 830 which the exhibitor desires to re-export or to return to the country of origin may be re-exported or shipped back to said place of origin free from any taxes, duties, fees and chargs imposed by the revenue laws of the Philippines enforced at the time of shipment.

14. Articles imported or brought to the Philippines under the provisions of Republic Act No. 830 may be withdrawn for use and consumption in the Philippines. However, all articles when so withdrawn from the fair or exposition shall upon withdrawal, be subject to taxes, duties, fees and charges imposed upon such articles by the revenue laws enforced at the itme of said withdrawal.

15. Any article included in the original invoice or bill of lading of an exhibitor but no longer found or included in the inventory made of exhibits after the fair or exposition shall be considered as withdrawn from the fair or exposition for use or consumption; provided, however, that articles donated to the Republic of the Philippines or any agency or instrumentality thereof shall not be considered as withdrawn for use or consumption. In this case, the date of the termination of the fair or exposition shall be considered as the date of withdrawal of said articles from the fair or exposition.

16. Articles which are not re-exported or shipped back to the country of origin after the fair or exposition but are sold or consumed locally shall be subject to the taxes, duties, fees and charges imposed by the revenue laws of the Philippines. Articles not re-exported or shipped back to their country of origin within two months after the termination of a fair or exposition shall be deemed to be withdrawn for use or consumption in the Philippines and shall be subject to taxes, duties, fees and charges imposed upon such articles by the revenue laws of the Philippines after the expiration of the said period of two months.

17. Proceeds from the sale of articles exhibited or displayed in any fair or exposition of the arts,

sciences and industries in the Philippines may be remitted to the country of origin of the goods subject to the laws and the rules and regulations and/or circulars of the Central Bank of the Philippines governing dollar remittances. Such remittances shall be subject to the taxes, fees and charges imposed by the revenue laws of the country.

18. All importations made under Republic Act No. 830 shall not be charged against any existing import allocations.

19. These rules and regulations shall take effect immediately upon promulgation.

PERFECTO E. LAGUIO
Undersecretary

APPOINTMENTS AND DESIGNATIONS

BY THE PRESIDENT OF THE PHILIPPINES

Ad Interim Appointments

November 1958

David Manipula as Senior Official, Philippine Reparations Mission in Japan, November 7.

Dr. Fausto G. Tapiador as Member of the Board of Dental Examiners, November 28.

Filadelfo Inocentes as Member of the Board of Accountancy, November 28.

Designations by the President

November 1958

Gregorio Ledesma as Acting Member of the City Council of Zamboanga City, November 5.

HISTORICAL PAPERS AND DOCUMENTS

PRESIDENT GARCIA'S SPEECH AT THE RE-UNION MEETING OF ALUMNI OF THE "BIG TEN" HELD AT THE WINTER GARDEN OF THE MANILA HOTEL, THURSDAY EVENING NOVEMBER 27, 1958

IT IS a pleasure, indeed, for me to be with you at this annual meeting of the Alumni of the universities in mid-western United States which make up the football conference known as the Big Ten. I congratulate you on having conceived the excellent idea of getting together on this day of thanksgiving every year for the purpose of renewing old friendships and of enjoying the company of your fellow-alumni and friends. The hilarity and the fun which saturated the atmosphere of this room during the last hour or so is as eloquent proof that you know how to lay aside your worries on proper occasions and to be as jovial and carefree as you were in the halycon days of your youth. I agree with you that clean and harmless merry-making such as this can be a healthful tonic that can relieve tensions and give zest to human living in this highly competitive age.

As I look about me and see the different groups gathered around these festive boards, I realize at once that I am speaking before a select audience, among whom are the most valuable elements of our cosmopolitan community. Verily, we have here men and women who have found their places and made their mark in our social, cultural, scientific, or industrial life. Many of you are in the government service and, therefore, are doing your part of the government's mission of ministering to the needs of our people. Inspired by the presence of such an array of notable personalities, I shall, with your kind indulgence, take advantage of this opportunity to say a few words on the role that the alumni of the Big Ten can play in the conduct of the affairs of this country.

It is well that now and then we put our heads together and consider how this country of ours is faring and what our university graduates, individually and collectively, can do to promote its welfare and progress. This is important in a democracy like ours. Under a totalitarian regime the practice of taking common counsel with the citizens would not be of much consequence, since the direction of the country's affairs is placed in the hands of an individual or a small group of individuals. But we have expressed in clear and categorical terms our preference for democracy, both as a form of government and as a way of life. We expressed that preference in the Malolos Constitution, which stated in Article 1 that "the political association of all Filipinos constitutes a nation whose state is called the Philippine Re-

public." And we reaffirmed our faith in democracy when in the preamble of our present Constitution we declared that it is our aim and desire to secure to ourselves and our posterity "the blessings of independence under a regime of justice, liberty, and democracy." Now, as you very well know, under such a regime, "sovereignty resides in the people and all government authority emanates from them." Therefore, the more we consult with the people, the more we take them into our confidence, and the more we allow them to share the responsibility of finding workable solutions to the manifold problems confronting the country, the more we broaden the base of democracy and the more we strengthen the foundations of our democratic institutions.

Yes, my friends, we need to address ourselves to the tremendous problems that beset our country today. Every country has its own problems, but ours have been aggravated by the fact that only a few years ago we went through a cruel and devastating war which shattered our economy, destroyed our cities, and laid waste our countrysides. Then, too, while our country was still lying prostrate and bleeding, our republic was born, creating new needs and new demands which had to be met if we were to restore peace and relative prosperity within our borders and maintain our national prestige abroad. Today we are still being faced with the problems that usually attend the birth of a new nation. Our problems are those of survival and these are by no means easy. Even the United States, the wealthiest country in the world, is feeling the pinch of an economic recession. Indeed, in the language of Thomas Paine, "these are the times that try men's souls." But our mettle has been tested time and again in the past and we have proven our ability to survive serious crisis which would have crushed a less courageous and less determined people. We are confident, therefore, that we shall live through these hardships, strong and vigorous as ever.

Now, just to cheer up those among us who appear to see nothing but the dark side of things, let me refer to the progress we have made during the last six decades. I need not tell you that we rose from our status as a subject people to that of an independent nation, the first to attain that status in Southeast Asia. Nor is this all, for young as she is, the Philippines has succeeded in making her voice heard in the councils of free nations, particularly in the United Nations Organization and its specialized agencies. Similar progress has been made in the health field, where such epidemics as smallpox and cholera, which used to decimate our population, have been entirely wiped out, thanks to the advance of medical science in this country and the better understanding of the rules of health and sanitation on the part of our people. And again, progress has been

made in the field of education, as evidenced by the extension of educational opportunities to a greater portion of our population, the raising of our percentage of literacy, and the establishment of an increasing number of higher institutions of learning, where our young people may obtain the professional and technological training they need to prepare them for competence and leadership in their respective fields of endeavor.

And we shall continue to move forward, for progress does not operate in a closed system. The human spirit does not suffer itself to be shut up or circumscribed for long. It is in the nature of man ever to aim toward perfection or, to borrow the language of the poet, to "build more stately mansions" than the preceding ones. Every advance we make spurs us on to further advances. Now, to this desire for progress there are no visible limits. The farther we go, the wider the vistas we get and the stronger the urge to move on, to project ourselves into the future and to use our imagination in an effort to define our problems, analyze them into their factors, and finally choose the courses of action that are calculated to yield the best results.

The progress of a nation has many facets and, in order for such progress to be balanced, it should cover every aspect of our national life—agriculture, industry, communication, commerce, education, culture, and all the other aspects of national existence that give it meaning and substance. In my inaugural address last December and in my message to Congress on the state of the nation early this year I made mention of some of these aspects which in my opinion require immediate attention. It would be superflous for me to repeat them here. Suffice it to say that this administration is pledged to work for the welfare and happiness of our people. In line with this objective, steps have been taken to improve the condition of our people not only in the urban centers but also in the rural areas. The institution of land reforms, the organization of cooperatives, the extension of credits, the harnessing of our streams in order to provide our people with electricity for lighting and for power, the establishment of rural health units, the construction of irrigation systems and as well as that of highways and feeder roads, the sinking of artesian wells, and the extension of school facilities to the remotest barrios—all of these have been motivated by the sincere and earnest desire of the administration to raise the standard of living of our people.

Now, the successful implementation of this ambitious program of the administration requires the earnest and whole-hearted cooperation of all sectors and elements of our population. It goes without saying that no enterprise, however worthy, can prosper without the cooperation of all concerned. Therefore, government and private agencies must work together in a spirit of dedication in order to

accomplish our purposes. The problems that lie ahead are many and they are difficult. But they are not incapable of solution. What we need are imagination and will power—imagination to conceive and plan methods of improvement and will power to see that those plans are carried out to successful completion.

Among those who are called upon to extend the needed cooperation are the alumni who are gathered here this evening. Because of the unusual advantage you have enjoyed as students and graduates of institutions of high standing in the United States, you are in the best position to lend a helping hand in the national endeavor to improve the lot of our people. It is the duty of all Filipinos, irrespective of party affiliation, to contribute their energies to this effort. This is no time for petty bickerings and recriminations. In times of stress, Filipinos from all walks of life must close ranks and contribute their strength, their learning, and their wisdom to the attainment of our common objective of ushering in a brighter day for our country.

Ladies and gentlemen, in the great and arduous task of nation building, the need is for unity of effort. We cannot afford to dissipate our energies and our strength by working at cross-purposes. I, therefore, call upon you to join us in the pursuit of our objective so that we may all pull together to the end that our republic which came into being after so many untold sacrifice, may live and endure until time shall be no more.

PRESIDENT GARCIA'S SPEECH AT THE OPENING SESSION OF THE ANNUAL CONVENTION OF THE PHILIPPINE HISTORICAL ASSOCIATION HELD AT THE UNIVERSITY OF THE EAST AUDITORIUM ON NOVEMBER 28, 1958

PRESIDENT DALUPAN,
OFFICERS AND MEMBERS OF THE PHILIPPINE HISTORICAL ASSOCATION,
DELEGATES TO THIS CONFERENCE,
DISTINGUISHED GUESTS,
LADIES AND GENTLEMEN:

I COMMEND the Philippine Historical Association for its initiative and energy in organizing and sponsoring this convention. In a young Republic like ours the cultural values are often unwittingly depreciated. This is perhaps due to the long-range and intangible nature of culture, as contrasted to the concrete and immediate results of other endeavors, like trade and commerce. Yet, while the immediate objectives of society are not to be minimized, the long-range objectives often prove of far greater worth to a nation. A cultural event is far and above a circus or a carnival or a killing in the stock market.

In the writing of our own history we are at a relatively early stage. The efforts of this Association, therefore, to intensify historical studies and stimulate historical writing

are not only commendable but also significant. Much of what passes for Philippine history is far from authentic. This is because the authorship is either foreign, and the scholarship obscured by political or social bias, or Filipino but suffering from resentment or anger or lack of scholarship. The objective of the association of rewriting Philippine history so as to render it more accurate and truthful is therefore one worthy of the support of everyone interested in a proper assessment of our past.

The work is obviously tremendous. Not only is the writing of history a difficult science but the problems facing the Philippine historian are massive. The original Greek word for history meant research, exploration, and information. This task would be quite simple were it not for many factors that can obscure the truth. The writing of history is both objective and subjective, and a good history is one in which the two are balanced. History may soar to the level of art and philosophy, and this is to the good; but its principal purpose after all is the solid establishment of facts and the precise exposition of the facts established. In short, history is the pursuit and expression of truth.

In the writing of history, therefore, there is no room for resentment whether present or past, for prejudice of any kind for mere speculation however plausible. The true historian—the Filipinos who are to follow the brilliant line of historians from Herodotus and Thucydides to Toynbee and Churchill—must be scholars possessed of energy to dig the facts whether they are buried in manuscripts or archeological objects; of equanimity and balance to raise above resentments and prejudices; of reason and logic to interpret and explain established facts correctly and lucidly; of imagination and vision to see the past and the future clearly in relation to each other; and of absolute honesty and integrity to transmit the facts of history with faithfulness and devotion as a precious national legacy willed to an endless posterity.

I understand that this convention preludes an international historical foregathering to which will be invited delegates from Asian and Pacific countries. Your plan is logical and commendable. The mistakes and shortcomings of the present convention, if any, will afford lessons that will serve you in good stead in planning and getting out the bigger convention. Your success and your achievements now will naturally be precious capital for the international undertaking. I hope it will render substantial contributions to historical research and writing as well as to the cultural growth and mutual understanding of the nations and peoples comprehended.

The International Historical Convention envisioned by you indicates your appreciation of an orientation which Philippine history badly needs. There is a weealth of ma-

terials on our country's historical association with the West. The nearly 400 years of Spanish rule and the nearly 50 years of American tutelage are well documented. Although many of the existing historical works concerning these periods may not be of high scholarly order in the sense that they are more subjective than objective, the source materials are enormous in volume and accessible to our searchers. It is, therefore, reasonable to assume that if we have the historians gifted with the abilities and capabilities demanded by the task, the writing of historical works related to these periods is only a matter of time. It is almost inevitable that some of our historians will produce the works that will finally present and interpret the facts of the Philippine-Spanish and the Philippine-American periods.

The situation is entirely different with respect to the facts of Philippine history before the coming of Spain. In this period we need militant historians—historians who will have the energy and patience to deduce and reconstruct the facts from obscure evidences, most of which are to be discovered by the assistance of related sciences like archeology, anthropology, paleontology, and others. Part of the history of that period is undoubtedly to be found in the annals of our neighbors in the East. Not only had our ancestors had intercourse, both commercial and cultural, with other Oriental peoples but their historians have surely recorded some findings and observations concerning the Philippines which are valuable clues to our past. Your projected international historical convention is therefore valuable, at least potentially, as signalizing a new interest on the part of our historians in the historical materials that may be available in our neighbors in Asia. I am certain that in this task you will have the support of all individuals and of all countries that understand the place of history in human civilization.

You may have observed that I have often urged our people to follow a logical order in their effort to attain advancement. In this connection I have offered the slogan, "First thing first." In accordance with this slogan I believe that you will do well to concentrate all your efforts to making a success of the present convention. Although it is a good idea to keep the forthcoming international convention in mind, you should, for the present, marshal all your efforts, all your energies, and all your wisdom in making this present convention a resounding success.

This is also my sincere wish; I am in hopes that this convention being sponsored by our leading historical writers and teachers, will leave a record of enduring as well as memorable achievements. I am certain that this gathering will itself write history.

PRESIDENT GARCIA'S SPEECH UPON ARRIVAL IN TOKYO OVER TV-RADIO AT 6:30 P.M. (5:30 MANILA TIME), DECEMBER 1, 1958

I BRING to the people of Japan the greetings and best wishes of the people of the Philippines.

On this happy and memorable occasion I wish first of all to express my deepest appreciation for the cordial of all to express my deepest appreciation for the cordial welcome extended to me and Mrs. Garcia by their Imperial Majesties, the Emperor and Empress of Japan, and other leaders and representatives of your nation.

When His Imperial Majesty and the Prime Minister extended to me the official invitation to visit Japan, I was more than glad to accept. Pressure of official duties, however, prevented me from coming earlier or projecting a longer sojourn in your beautiful country.

I assure the Japanese people that I derive deep spiritual satisfaction to be able to reciprocate the visit to the Philippines of His Excellency Prime Minister Kishi and to undertake this mission of goodwill.

As the first Filipino president to pay an official visit to Japan, I feel at this moment something more than mere personal satisfaction. I consider your welcome for me as one more eloquent manifestation of friendship and goodwill between our two countries and peoples.

On the other hand, my visit here betokens and attests to our desire in the Philippines for better understanding with Japan whose proffers of friendship are welcome by the government and people of my country.

Japan and the Philippines have been cast by Destiny to exist close to each other—politically, economically, and culturally. Neither of us can afford to ignore this geophysical fact. As you know, the relations between the Philippines and Japan have not always been fortunate. A costly and destructive war involved the two countries not so long ago.

But Time, the great healer, has been at work. It may truthfully be said now that the bitterness of former years is being washed away by compassion and forgiveness. One touch of misfortune has indeed made us kin before the implacable horrors of war.

Rather than prolonged recriminations, the present time calls for sincere determination and redoubled efforts that such a holocaust may never, never be repeated. For this reason we Filipinos hail the new Japan for having renounced force as an instrument of national policy.

Our two countries have much in common other than material interests. Both adhere to democratic principles and both believe in progress through science and technology. And both, while holding fast to national culture and tradition, have benefited from their oneness with the Free World. Thus, our ideological and geophysical affinities are strong bonds that should hold us together in lasting friendship and enduring peace.

Through the visit of Prime Minister Kishi to the Philippines last year, the people of Japan have demonstrated their goodwill towards my country in clear and unmistakable terms. I am here now not only to return that visit and that goodwill, but to water the friendship which has been reborn following the conclusion of the Peace Treaty and the Reparations Agreement. Your efforts and ours during the recent years have been directed towards giving substance to the spirit of these treaties. Filipino-Japanese cooperation has thus become a reality where formerly it had been but a hope. But this state visit, I like to believe that I may be able, if only in a modest way, to contribute towards the growth of this cooperation, to establish genuine friendship between neighbors, and to foster honorable peace not only in our part of the globe but throughout the world as well.

DECISIONS OF THE SUPREME COURT

[No. L-10841. March 24, 1958]

STONEHILL STEEL CORPORATION, petitioner *vs.* COMMISSIONER OF CUSTOMS, respondent

TAXATION; BENEFITS OF EXEMPTION OF NEW AND NECESSARY INDUSTRIES; RETROACTIVE EFFECT OF REPUBLIC ACT 901; REFUND OF CUSTOM DUTIES PAID BEFORE PROMULGATION.—The intention of Legislature as to the scope of the phrase "retroact as of the date of the filing of the application for exemption" in section 4 of Republic Act 901, will only cover the period after its passage and payment of customs duties made by person engaged in new and necessary industries before the promulgation of said law is not subject to refund.

APPEAL from a resolution of the Court of Tax Appeals.

The facts are stated in the opinion of the Court.

Ozaeta, Lichauco & Picazo for the petitioner and appellant.

Assistant Solicitor General Esmeraldo Umali and *Solicitor Felicísimo R. Rosete* for the respondent and appellee.

MONTEMAYOR, *J.:*

This is an appeal from a resolution of the Court of Tax Appeals, dismissing the petition for review filed by petitioner, Stonehill Steel Corporation, of the decision of the Commissioner of Customs, denying the claim for refund of customs duties.

The facts in the case are not disputed. Petitioner Stonehill Steel Corporation is engaged in the manufacture of nails from nail wire. Being engaged in a new and necessary industry, on January 10, 1950, it applied for tax exemption under the provisions of Republic Act No. 35, which application was approved by the Secretary of Finance on October 9, 1950. The tax exemption, however, did not include exemption from customs duties and so petitioner paid customs duties on its imports of nail wire from March 11, 1950 to June 22, 1953, in the amount of ₱95,491.57.

On June 20, 1953, Republic Act No. 901, revising and amending Republic Act No. 35, was promulgated. Under this law, new and necessary industries were exempted from the payment not only of all internal revenue taxes, but of all taxes. On June 30, 1955, the Secretary of Finance, pursuant to Republic Act No. 901, gave a certificate of tax exemption to herein petitioner, subject, however, to the requisites and conditions set forth in his letter of the same date, June 30, 1955. Among other things, that letter stated that exemption therein extended, refers to "customs duties (effective June 20, 1953)".

On October 15, 1953, petitioner, through its president, asked the Collector of Customs for the refund of the sum of ₱95,941.57, representing the customs duties it had paid on its nail wire imports from March 11, 1950 to June 22, 1953, invoking the provisions of Section 4, Republic Act No. 901, which provides:

"The benefits of exemption of new and necessary industries from the payment of all taxes under this Act shall, upon the approval of the application for exemption by the Secretary of Finance, retroact as of the date of filing of the application for exemption.",

and to the opinion of the Secretary of Justice, holding that exemption for all taxes, included exemption from customs duties.

The Collector of Customs on October 26, 1953, wrote the petitioner, denying the request for refund on the ground that Section 4 of Republic Act No. 901 applied to new and necessary industries operating under said Act, and not under Republic Act No. 35. Petitioner did not appeal from said denial. In the meantime, it assigned its rights to refund to its client. But on February 26, 1954, petitioner asked the Collector of Customs for a reconsideration of his denial. On April 24, 1954, the acting Collector of Customs denied the request for reconsideration. On September 19, 1955, petitioner appealed the decision of the Collector of Customs to the Commissioner of Customs, which appeal was denied by the Commissioner of Customs on September 29, 1955. It was this order or decision of denial of the Commissioner of Customs which was appealed to the Court of Tax Appeals on October 28, 1955.

The Court of Tax Appeals dismissed the appeal on two grounds: First, the petitioner herein failed to comply with the provisions of Sections 1370–1373 and 1380 of the Revised Administrative Code; and second, that under Republic Act No. 901, petitioner is not entitled to refund for the reason that the exemption provided in Republic Act No. 901 refers only to the period after the passage of said Act.

With regard to Sections 1370–1373 and 1380 of the Revised Administrative Code, said sections apparently refer to a ruling or decision of a collector of customs wherein liability for customs duties, fees, or other money charges is determined, in which case, the party adversely affected by such ruling, after paying the amount of the assessment, may make a protest and the Collector shall reexamine the matter, and should he overrule the protest and sustain his previous ruling, the party aggrieved is required to appeal said ruling to the Commissioner of Customs, within 15 days after notification, otherwise the ruling of the Collector becomes final and conclusive. After examining the aforecited sections of the Administrative

Code, we are inclined to agree with counsel for petitioner that said sections, referring as they do to assessments made by a Collector of Customs of customs duties, fees, or other money charges, cannot refer to a case of refund, and that consequently, it was not necessary for the petitioner to appeal from the denial by the Collector of its petition for refund, to the Commissioner of Customs, within 15 days.

It is hard to imagine a case of a petition for refund being filed with the Collector of Customs. Supposing that a collector commits a mistake in the classification of merchandise imported, and makes an illegal or erroneous assessment. The party aggrieved files a protest, but pays the amount assessed on it, and upon considering the protest, the Collector realizes his mistake and finds that he had collected an amount more than he should and amends or changes his original assessment. In that case, all that he has to do is to pay or return to the aggrieved party the excess amount and the case is finished. But supposing that the Collector insists in his original erroneous assessment and the aggrieved party appeals his ruling to the Commissioner of Customs who, discovering the mistake in the classification of the merchandise, modifies the ruling of the Collector, and decides that there was an excess amount illegally collected by the Collector. In that case, his ruling or decision would also provide for refund to the aggrieved party and the case will then be terminated. But these two cases or examples above-mentioned really refer to assessments protested by the aggrieved party, and they are covered by Sections 1370–1373 and 1380. The law apparently has not provided for a case like the present wherein an assessment was validly made and the amount voluntarily paid by the importer, and naturally, no protest was made, but that a law passed years later provided for some sort of exemption from the payment of customs duties, and involving said new law, the importer who had previously paid customs duties voluntarily and without protest now asks for refund of said duties covered by the exemption. This part of the Customs Law would appear to need clarification, and the Commissioner of Customs or the Department Head might possibly call the attention of the Legislature.

But we prefer to decide the present case on the basic issue of whether or not petitioner is entitled to exemption, under Republic Act No. 901, of the customs duties paid by it before the promulgation of said Act. For this purpose, we shall assume that the case involves a valid appeal from the decision of the Commissioner of Customs to the Court of Tax Appeals. As we understand the provisions of Republic Acts Nos. 35 and 901, a new and necessary industry, like the petitioner herein, has

to have two separate applications, one under Republic Act No. 35 for exemption of all internal revenue taxes, and another application for exemption under Republic Act No. 901 for exemption from the payment of *all* taxes, including customs duties. Section 4 of Republic Act No. 901, in speaking of the retroactivity of the benefits of exemption as of the date of the filing of the application for exemption, clearly refers to the application for exemption under said Republic Act No. 901. As a matter of fact, the records show that petitioner has filed such application under Republic Act No. 901. Naturally, the exemption shall retroact to the date of the filing of said application. It is to be noted that the certificate of tax exemption dated June 30, 1955, given the petitioner by the Secretary of Finance, under the provisions of Republic Act No. 901, expressly enumerated and mentioned the taxes coming under the exemption and made it clear that the exemption from customs duties was effective June 20, 1953, the date of the promulgation of Republic Act No. 901. Furthermore, and to dissipate all doubt, the intention of the Legislature as to the scope of the phrase "retroact as of the date of the filing of the application for exemption" in Section 4 of Republic Act No. 901, is explained and clarified in the discussion of the bill in Congress, as shown by the Congressional Record:

"MR. CEA: * * * Now, my question is: will the retroactive effect of this law cover the two year period during which that industry has been paying taxes to the government?

"MR. ROY: No, it will not. It will only cover the period after the passage of this law. It will not cover the period before the passage of the present bill." (House Congressional Records Vol. 48, 2nd Congress, 4th Regular Session, April 14, 1953, pp. 47–48)

IN VIEW OF THE FOREGOING, we hold that the petitioner is not entitled to exemption from the payment of customs duties before the promulgation of Republic Act No. 901, and consequently, is not entitled to refund of said amount. The resolution appealed from is hereby modified in the sense that the decision or ruling of the Commissioner of Customs, denying the petition for refund, is affirmed, with costs against the petitioner.

Parás, C. J., Bengzon, Padilla, Reyes, A., Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.,* concur.

Resolution modified.

[No. L-8333. December 28, 1957]

GELACIO BODIONGAN, petitioner, *vs.* HON. PATRICIO C. CENIZA, ETC., ET AL., respondents

PLEADING AND PRACTICE; JUDGMENT BASED ON COMPROMISE AGREEMENT; RELIEF FROM SAID JUDGMENT, WHEN TO BE FILED.—A judgment based on a compromise agreement is considered final where, as in the present case, the agreement of the parties contained nothing which would require subsequent court approval. The fact that the court could still act in the case in the proceeding for execution does not make the judgment to be executed any the less final. In such a case, the period to file the petition for relief from said judgment commences to run from the date the decision was rendered.

ORIGINAL ACTION in the Supreme Court. Certiorari, prohibition with preliminary injunction.

The facts are stated in the opinion of the Court.

Cayetano P. Paderanga for petitioner.
Liliano B. Neri for respondent Antonio Barrientos.

REYES, A., *J.:*

This is a petition for certiorari to annul certain orders issued by the respondent judge in Civil Case No. 1407 of the Court of First Instance of Occidental Misamis denying relief from the judgment rendered therein and authorizing the execution of said judgment.

It appears that the civil case mentioned was initiated by the herein petitioner Gelacio Bodiongan with a complaint filed on September 4, 1951 for the recovery of possession of a truck, which, so it was alleged, had been mortgaged and delivered to him by Antonio Barrientos, one of the defendants therein, but which, through force and intimidation and without the mortgage debt having been paid off, was later "snatched" by the said Antonio Barrientos and, without plaintiff's knowledge, sold, first to Roman Mabanag and later to the other defendant Prudencio Revelo. Mabanag intervened and claimed ownership of the truck through purchase from Antonio Barrientos. Plaintiff impugned the purchase as made in bad faith and in violation of the chattel mortgage law, and then amended his complaint to include Policarpio Barrientos as party defendant, alleging that the latter had also mortgaged a truck to him but had failed to pay the mortgage within the time stipulated. The amended complaint, therefore, prayed for the return of the truck taken from plaintiff by the defendant Antonio Barrientos and for the foreclosure of the chattel mortgage constituted on the other truck by the other defendant Policarpio Barrientos. The defendants filed their answer to the amended complaint, and plaintiff, on his part, filed a reply to the said answer. And with the issues thus joined and with most of the evidence already presented, the parties

to the action submitted an agreement signed by themselves and their respective attorneys with the request that judgment be rendered in accordance therewith. In view thereof, the court rendered its decision, dated September 25, 1953, quoting and approving the agreement aforementioned and ordering the parties to comply with its terms.

The agreement reads:

"Between Plaintiff Bodiongan and Intervenor Roman Mabanag:

1. That the truck claimed by the Intervenor Roman Mabanag in the above entitled case shall remain with and belong to the herein plaintiff, Gelacio Bodiongan, whose ownership thereof Intervenor and defendant hereby recognize and respect;

2. That plaintiff Gelacio Bodiongan shall pay the Intervenor Roman Mabanag the sum of SIX THOUSAND NINE HUNDRED PESOS (₱6,900) Philippine currency, the sum of ₱2,500 is hereby paid, and the Intervenor Roman Mabanag acknowledges to have received the same;

3. That the balance of ₱4,400 with 8 per cent interest shall be paid by the said plaintiff Bodiongan within a period of one (1) year in twelve (12) monthly installments, to wit: the sum of ₱366.66 within the first 5 days after the end of each and every month effective October 1, 1953;

4. That should plaintiff fail to pay the first four (4) or any four (4) installments as above specified, the whole sum shall thereby become due and payable, and execution shall issue on the judgment rendered based on this agreement.

Between Plaintiff Bodiongan and Defendant Antonio Barrientos:

1. That plaintiff Gelacio Bodiongan shall return and deliver to defendant Antonio Barrientos in good working condition and properly equipped and fit for TPU operation the passenger truck subject of the controversy between them in this case;

2. That the work in putting the said truck in good working condition shall be done by DERONG REPAIR SHOP at Ozamis City and that all the expenses incurred therein including labor, costs of spare parts and other services, shall be borne exclusively by the plaintiff;

3. That the delivery of the said truck in the conditions above stated shall be made to the defendant at Ozamis City within a period of two (2) months from the date of this agreement.

4. That in satisfaction of the claim of the plaintiff, defendant Antonio Barrientos shall pay to him the sum of FIVE HUNDRED PESOS (₱500) within a period of two (2) months from the date the passenger truck above referred to is delivered to and received by the defendant;

5. That in case of failure of the plaintiff to comply with the obligation above stated, the Court shall order the repair of the said truck at the expense of the said plaintiff;

6. That in case of failure of the said defendant Antonio Barrientos to pay the sum herein above stated, the said truck shall answer for the said amount in the form of security."

On December 10, 1953, the defendant Antonio Barrientos filed a motion alleging that plaintiff had failed to return the truck to the said defendant within the two months stipulated in the agreement and praying, among other things, that the court order the truck repaired at plaintiff's expense and that the sum of ₱7,717, the estim-

ated cost of repairs, be deposited with the city treasurer from whom the repair shop was to draw such amounts as might be needed from time to time. The motion contains a notice to plaintiff himself that it was to be submitted for the resolution of the court at 8 o'clock a.m. on December 15, 1953 and also a statement that copy thereof had been sent by registered mail to plaintiff on the 10th of that month. No objection having been made to the motion, the respondent judge, on December 15, rendered an order in open court directing the clerk of court to execute the decision in accordance with what was prayed for in said motion. But it would appear that, at the instance of plaintiff, the effectivity of the order was suspended so as to give him time to comply with the agreement and that, before the period of grace had expired, plaintiff delivered the truck to the clerk of court.

On March 9, 1954 and then again on the 22nd of that month, Antonio Barrientos filed a second motion for execution, alleging that the truck delivered by Bodiongan to the clerk of court was not in good working condition and was disapproved for registration by the office of the district engineer, for which reason the movant prayed that the order suspending execution be lifted. On March 26 plaintiff filed his opposition to the second motion for execution, but on the following day, March 27, the date set for the hearing of the motion, the court, finding the motion well founded, handed down an order (similar to the one rendered on December 15) requiring plaintiff to deposit with the city treasurer the sum of ₱7,717, the estimated costs of repairs, and directing a levy on his property to cover that amount should he fail to do so within 15 days. On April 14, plaintiff asked for a reconsideration of this last order, but the motion having been found to be groundless and without merit, the court handed down an order, dated July 3, 1954, directing that its order of March 27, 1954 be immediately executed.

Five days thereafter, that is, on July 8, 1954, plaintiff served notice on the court that he was changing counsel and that thereafter Cayetano P. Paderanga was to be his attorney of record "in place of the attorneys-of-record, Attys. Crispin G. Labaria and Ceferino E. Paredes" and on that same day plaintiff also filed a verified petition to have the aforementioned agreement of September 5, 1953 and the decision rendered in accordance therewith, as well as the orders thereafter handed down, set aside on the grounds (1) that plaintiff had affixed his signature to said agreement after the respondent judge had exerted pressure and undue influence upon him to the extent of making the judge's action in that regard amount to a fraud; (2) that fraud was also committed when notice of hearing of the motions for execution and the motion

for reconsideration was not served on his attorney; (3) that the order for execution dated March 27 was "manifestly unconscionable, highly oppressive, evidently unreasonable and contrary to law;" and (4) that plaintiff had sufficient, valid and sound causes of action against the other party litigants. In an *ex parte* motion separately filed on that same day, plaintiff, through his new attorney, asked the respondent judge to "disqualify or inhibit himself from further acting in the instant case on grounds of propriety and delicacy."

Opposing the petition for relief, the defendant Antonio Barrientos denied the imputations of fraud and judicial pressure and undue influence therein contained and called attention to the fact that the said petition was too late, the same having been filed more than 9 months after the decision sought to be set aside. Finding the opposition "to be well-founded, in that the petition for relief has been filed out of time as provided for in Section 3, Rule 38," the court under date of August 28, 1954 rendered an order denying the said petition, and on September 11 issued another order directing the clerk of court "to issue a writ of execution as prayed for."

On September 18, plaintiff filed a motion asking for a reconsideration of the order of August 28, denying his petition for relief; and the motion for reconsideration having been denied, he filed the present petition for certiorari in this Court on October 2, 1954, alleging that the respondent judge gravely abused his discretion in ignoring his motion for disqualification and also acted arbitrarily and with bias in passing upon and denying the petition for relief in which the said judge's "own actuations have been questioned and put in issue," declaring the said petition out of time and not applying the ruling of this Court in the case of Jose Saminiada *vs.* Epifanio Mata, et al., G. R. No. L–4385, January 2, 1953.

After going over the record, we agree with the respondent trial judge that the petition for relief was out of time, it appearing that it was filed more than nine months after the decision sought to be set aside was rendered.

Arguing that the petition was filed on time, petitioner cites the case of Saminiada *vs.* Mata, G. R. No. L–4385, January 2, 1953. We find the citation not in point. Though the judgment in that case was also based on a compromise agreement, that judgment was not considered final because a commissioner designated by the parties was still to segregate from a disputed parcel of land the portion to be awarded to one of the parties and this Court said that "for all practical purposes the proceedings after the compromise agreement was a partition of real estate" which, according to the Rules, needed court

approval. It was, therefore, there held that the decision based on the agreement did not become final until after the submission of the report by the commissioner on segregation and its approval by the parties and the court, so that the period to file the petition for relief did not commence to run from the date of the decision but only after the court had acted on the commissioner's report. In the present case, however, the agreement of the parties contained nothing which would require subsequent court approval. All that remained for the court to do was to enforce its judgment. The fact that the court could, at that stage of the proceeding, still act in the case in the proceeding for execution, does not make the judgment to be executed any the less final.

Petitioner makes capital of the fact that the respondent judge issued his order denying the petition for relief without first deciding the motion for his disqualification for reasons of "propriety and delicacy". These, however, are no legal grounds for disqualifying a judge, and while it is true that the respondent judge did not expressly declare himself qualified, still in denying the petition for relief instead of withdrawing from the case, he must be deemed to have in effect decided in favor of his competency. At any rate, the question of whether or not the respondent judge should have disqualified himself from taking cognizance of the petition for relief is really of no importance, considering that the said petition was, as the record does show, filed more than nine months after the decision sought to be set aside and, therefore, beyond the period allowed by section 3 of Rule 38.

WHEREFORE, the petition is denied with costs against the petitioner.

Parás, C. J., Bengzon, Padilla, Bautista Angelo, Labrador, Concepción, Reyes, J. B. L., and *Endencia, JJ.,* concur.

Petition denied.

[No. L-11602. April 21, 1958]

ALFREDO CUADRA, petitioner and appellant, *vs.* TEOFISTO M. CORDOVA, in his capacity as Mayor of Bacolod City, respondent and appellee.

1. PUBLIC OFFICERS; POLICE FORCE; APPOINTMENT OF ONE WHO ALREADY HELD GOVERNMENT POSITIONS; RULE PROVIDING AGES BETWEEN 21 AND 30 DOES NOT APPLY.—Section 17 of Executive Order No. 175, series of 1930 only applies to one who desires to take a civil service examination for initial appointment as to which the age of the examinee must be between 21 and 30 and not to the appointment of one who had already held several positions in the government.
2. ID; ID; TEMPORARY APPOINTMENT; TENURE OF OFFICE AT PLEASURE OF APPOINTING POWER.—A temporary appointment is similar to one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power. And one who bears such an appointment cannot complain if it is terminated at a moment's notice.

APPEAL from a judgment of the Court of First Instance of Negros Occidental. Fernández, *J.*

The facts are stated in the opinion of the Court.

Palanca & Torres for petitioner and appellant.

City Attorney (ex oficio) *Jesús S. Rodríguez* for respondent and appellee.

BAUTISTA ANGELO, *J.:*

This is a petition for mandamus filed before the Court of First Instance of Negros Occidental seeking petitioner's reinstatement as a policeman of the City of Bacolod and the payment of his back salaries from the date of his dismissal to the date of his reinstatement. Respondent in his answer set up the defense that petitioner has been removed from the service in accordance with law.

The case was submitted on an agreed stipulation of facts. Thereafter, the trial court rendered decision holding that the appointment of petitioner was not in accordance with law and so his dismissal was proper. It consequently dismissed the petition. From this decision, petitioner appealed.

The important facts to be considered in this appeal are: Petitioner was not a civil service eligible. He was temporarily appointed as member of the police force of Bacolod City on November 11, 1955. The position to which he was appointed was a newly created one, the salary for which was included in the budget for the fiscal year 1955–1956. This budget was approved by the City Council on November 14, 1955, and by the Secretary of Finance on January 18, 1956. Petitioner was paid his salary for the service he had rendered from the date of his appointment to the date of his removal. Petitioner is a high school graduate and had been employed before the war in the City Engineer's Office of Bacolod City for about two

years and was later transferred to the Patrol Division of Bacolod Police Department until the coming of the Japanese in May, 1942. He was also employed as confidential agent of former Mayor Amante and served in that capacity from 1953 to 1954. He was never accused of any crime nor were charges filed against him before his dismissal.

In justifying the dismissal of petitioner from the service, the trial court gave as its only reason the fact that he was already 47 years, 3 months and 13 days old when he was appointed to the position of member of the police force of Bacolod City and as such he was disqualified for such appointment in the light of Section 17 of Executive Order No. 175, series of 1930, which provides in part that "To be eligible for examination for initial appointment, a candidate must be a citizen of the Philippines, between the ages of twenty-one and thirty, of good moral habits and conduct, without any criminal record, and must not have been expelled or dishonorably discharged from the civil or military employment." It is claimed by appellant that such ruling is erroneous because such provision of the Executive Order only applies to one who desires to take a civil service examination and not to the appointment of one who, like appellant, had already held several positions in the government.

There is merit in this claim. Section 17 above referred to specifically provides that "To be eligible for examination for initial appointment, a candidate must be a citizen of the Philippines, between the ages of twenty-one and thirty", which terms are clear enough to raise any doubt as to their import. They refer to an examination for initial appointment, and nothing else, as to which the age of the examinee must be between 21 and 30. This interpretation appears more justified when we consider Section 16 of the same Executive Order which provides that "The Commission of Civil Service shall announce from time to time the date and place of examination to qualify for the police service, which shall be held in accordance with the provisions of the Civil Service law and Rules."

But there is one argument which justifies the separation from the service of petitioner and that refers to the fact that when he was appointed he was not a civil service eligible and his appointment was merely temporary in nature. His appointment being temporary does not give him any definite tenure of office but makes it dependent upon the pleasure of the appointing power. A temporary appointment is similar to one made in an acting capacity, the essence of which lies in its temporary character and its terminability at pleasure by the appointing power. And one who bears such an appointment cannot complain if it is terminated at a moment's notice.

Thus, in Villanosa, et al. *vs.* Alera, et al., G. R. No. L–10586, May 29, 1957, we held:

"* * * Since it is an admitted fact that the nature of the appointments extended to petitioners was merely temporary, the same cannot acquire the character of permanent simply because the items occupied refer to permanent positions. What characterizes an appointment is not the nature of the item filled but the nature of the appointment extended. If such were not the case, then there would never be temporary appointments for permanent positions. This is absurd. The appointments being temporary, the same have the character of 'acting appointments' the essence of which is that they are temporary in nature. Thus, in Austria *vs.* Amante, 79 Phil., 780, this Court stated:

> 'Lastly, the appointment of petitioner by the President of the Philippines was merely as Acting Mayor. It is elementary in the law of public officers and in administrative practice that such appointment is merely temporary, good until another permanent appointment is issued, either in favor of the incumbent acting mayor or in favor of another. In the last contingency, as in the case where the permanent appointment fell to the lot of respondent, Jose L. Amante the acting mayor must surrender the office to the lucky appointee.'

Reiterating this doctrine, this Court, in Castro *vs.* Solidum, G. R. No. L–7750, June 30, 1955, declared:

> 'There is no dispute that petitioner has been merely designated by the President as Acting Provincial Governor of Romblon on September 11, 1953. Such being the case, his appointment is merely temporary or good until another one is appointed in his place. This happened when the President appointed respondent Solidum on January 6, 1954 to take his place.'

"It is, therefore, clear that the appointments of petitioners, being temporary in nature, can be terminated at pleasure by the appointing power, there being no need to show that the termination is for cause (Mendez *vs.* Ganzon, G. R. No. L–10483, April 12, 1957)."

The decision appealed from is affirmed, without pronouncement as to costs.

Parás, C. J., Bengzon, Montemayor, Reyes, A., Labrador, Concepción, Reyes, J. B. L., Endencia, and *Félix, JJ.,* concur.

Judgment affirmed.

[No. L-10931. May 28, 1958]

FLORENCIA R. SORIANO, assisted by her husband MANUEL A. Q. SORIANO, plaintiff and appellant, *vs.* ONG HOO, ET AL., defendants and appellees.

SALES; CITIZEN SELLING REAL PROPERTY TO ALIENS; PRINCIPLE IN PARI DELICTO; STATE'S RESPONSIBILITY.—As the constitution is silent as to the effects or consequences of a sale by a citizen of his land to an alien, and as both the citizen and the alien have violated the law, none of them should have a recourse against the other, and it should only be the State that should be allowed to intervene and determine what is to be done with the property subject of the violation. What the State should do or could do in such matters is a matter of public policy, entirely beyond the scope of judicial authority. (Dinglasan, et al., *vs.* Lee Bunting, et al G. R. No. L-5996, June 27, 1956.) While the legislature has not definitely decided what policy should be followed in cases of violations against the constitutional prohibition, courts of justice cannot go beyond declaring the disposition to be null and void as violative of the constitution.

APPEAL from a judgment of the Court of First Instance of Manila. Barot, *J.*

The facts are stated in the opinion of the Court.

Gatchalian & Padilla for plaintiff and appellant.

Sycip, Quisumbing, Salazar & Associates for defendants and appellees.

LABRADOR, *J.:*

Appeal from a judgment of the Court of First Instance of Manila, Hon. Edilberto Barot, presiding, dismissing the action which was brought to recover two lots sold by plaintiff and her co-owner to the defendants.

On and before November 29, 1943, Florencia R. Soriano and her brother Teodoro R. Soriano were the registered co-owners, and their father Ramón Soriano (widower), the registered usufructuary of Lots Nos. 16 and 17, Block No. 1881 of the cadastral survey of Manila, covered by Transfer Certificate of Title No. 6147 of the Registry of Deeds of Manila. On November 29, 1943, the above co-owners and usufructuary sold the said lots to Ong Hoo for ₱160,000, of which ₱90,000 was paid at the time of the sale and ₱70,000 on December 4, 1943. On January 17, 1944, Ong Hoo registered the deed of sale executed in his favor and, thereupon, Transfer Certificate of Title No. 70030 was issued in his name. Ramón Soriano died on September 15, 1944 and Teodoro R. Soriano, on September 5, 1946 and as they both died intestate, Florencia R. Soriano as their sole heir succeeded in their rights to said properties.

On January 16, 1946, Ong Hoo sold the land to defendants Chung Te, Ching Leng and Ching Tan. The sale was registered on January 22, 1946 and, thereupon, Transfer

Certificate of Title No. 9597 of Manila was issued in their name.

The above facts appear in the stipulation of facts submitted by the parties in this case. The complaint alleges that both the original sale and the subsequent transfer made are null and void because the vendee and transferees are Chinese citizens and cannot acquire ownership of private agricultural land. It is, therefore, prayed that the sale executed in favor of the defendants be declared null and void and that the plaintiff be declared owner of the lots upon reimbursement by her of the price of the sale. The defendants in their answer allege that the complaint states no cause of action, inasmuch as the plaintiffs had participated in the execution of an illegal contract and so they can not maintain an action to recover what they had conveyed by virtue thereof; that defendants are innocent purchasers of the property for value; and that the sale was executed during the Japanese regime, at which time the Constitution of the Philippines was not in force.

The Court of First Instance of Manila held that the sale cannot be annulled at the instance of the vendor or vendors citing the cases of Cabauatan, et al., *vs.* Uy Hoo, G. R. No. L–2207, January 23, 1951; Ricamara, et al. *vs.* Ngo Ki, G. R. No. L–5836; and especially Rellosa *vs.* Gaw Chee Hun, G. R. No. L–1411, September 29, 1943.

It is argued on this appeal that the principle of *in pari delicto* is not applicable to the vendors for the reason that the provision of law supposed to have been violated is not a very clear provision but is a doubtful one, and its interpretation could have been the subject of mistake on the part of any of the parties. The constitutional prohibition against the acquisition of agricultural lands by aliens is absolute and unconditional; it contains no saving clause in favor of those who were not aware of its meaning or implications. The argument of the appellant is also contrary to the general rule of law that knowledge thereof is to be presumed. The claim that the principle of *in pari delicto* does not apply to the plaintiffs is, therefore, without merit.

It is also claimed that, in consonance with the policy of the State to retain lands in favor of its citizens and prohibiting aliens from acquiring them, the vendor in the case at bar should be allowed to recover back the property in the same manner as holders of homesteads who have disposed of the same as decided by Us in the case of Eugenio, et al. *vs.* Perdido, et al., G. R. No. L–7083, May 19, 1955. Distinction should be made between the prohibition against the disposition of homesteads and the prohibition made in the Constitution against the acquisition of lands by aliens. The evident purpose of the Public Land Law, especially the provisions thereof in relation to homesteads, is to conserve

ownership of lands acquired as homesteads in the homesteader or his heirs. (De los Santos *vs.* Roman Catholic Church of Midsayap, 50 Off. Gaz., [4] 1588; Acierto *vs.* De los Santos, G. R. No. L–5828, Sept. 29, 1954; Eugenio, et al. *vs.* Perdido, et al., *supra;* Angeles, et al. *vs.* The Court of Appeals, G. R. No. L–11024, Jan. 31, 1958.) This is evident from the provisions of the law, such as the prohibition against sale of the homestead within a period of five years from and after the date of the issuance of the patent or grant, and after five years and before 25 years after issuance of title without the consent of the Secretary of Agriculture and Natural Resources (C. A. No. 141, section 118), and the permission granted the homesteader or his legal heirs to repurchase the land within five years from the date of the conveyance (*Id.*, Sec. 119). In the case of the constitutional prohibition, the law is silent; it merely prohibits acquisition of land by foreigners. The prohibition stops there; as to the effects or results of a violation of the prohibition, both with respect to the citizen selling his land and the alien purchasing or acquiring the same, the Constitution is silent. If the citizen voluntarily disposes of his property, it would seem too much to expect that the law should order the return of the property to him. In the United States where a prohibition similar to our constitutional prohibition exists, it has been held that the vendor has no recourse against the vendee despite the alien's disability to hold the property, and that it is only the State that is entitled by proceedings in the nature of *office found* to have a forfeiture or escheat declared against the vendee who is incapable of holding title. (Vásquez *vs.* Li Seng Giap, et al., G. R. No. L–3676, January 31, 1955.) As the Constitution is silent as to the effects or consequences of a sale by a citizen of his land to an alien, and as both the citizen and the alien have violated the law, none of them should have a recourse against the other, and it should only be the State that should be allowed to intervene and determine what is to be done with the property subject of the violation. We have said that what the State should do or could do in such matters is a matter of public policy, entirely beyond the scope of judicial authority. (Dinglasan, et al. *vs.* Lee Bun Ting, et al., G. R. No. L–5996, June 27, 1956.) While the legislature has not definitely decided what policy should be followed in cases of violations against the constitutional prohibition, courts of justice cannot go beyond by declaring the disposition to be null and void as violative of the Constitution. We, therefore, feel We are not in a position to concede the remedy prayed for, for which reason the judgment dismissing the action should be, as it hereby is, affirmed, with costs against the plaintiffs.

Parás, Bengzon, Montemayor, Bautista Angelo, Endencia, and *Félix, JJ.*, concur.

REYES, J. B. L., dissenting:

While the opinion of Justice Labrador is fully supported by authority, I believe the time is ripe for a revision of the position of the Court in cases of alien land tenures.

For thirteen years since liberation, the Legislature has failed to enact a statute for the escheat of agricultural lands acquired by aliens in violation of the Constitution. Between this apparent reluctance of the legislative branch to implement the prohibition embodied in section 5 of Art. XIII of our fundamental charter, and the strict application by the courts of the *pari delicto* rule, the result has been that aliens continue to hold and enjoy lands admittedly acquired contrary to constitutional prohibitions, just as if the inhibition did not exist.

In view of the prolonged legislative inaction, it is up to the courts to vindicate the Constitution by declaring the *pari delicto* rule not applicable to these transactions. After all, the rule is but an instrument of the public policy, and its application is justified only in so far as it enforces that policy. Therefore, where its continued application to a given set of cases leads to results plainly contrary to the wording and spirit of the Constitution, there is every reason to discard it. Otherwise, the express rule against alien land tenures will speedily become the object of mockery and derision.

It may be that Filipinos who parted with their lands in favor of aliens morally do not deserve protection; but they are in no worse case than the alien purchasers, and moreover the Constitution is clearly in their favor.

I submit that it is more important that the constitutional inhibition be enforced than to wait for another branch of the government to take the initiative.

CONCEPCIÓN, *J.:*

I concur in the foregoing dissent.

Judgment affirmed.

[No. L-10202. January 8, 1958]

In the matter of the petition for naturalization of; SY CHHUT *alias* TAN BIN TIONG, petitioner and appellant, *vs.* REPUBLIC OF THE PHILIPPINES, oppositor and appellee.

1. CITIZENSHIP; FALSE STATEMENTS IN THE DECLARATION AND PETITION; PETITIONER'S IRREPROACHABLE CONDUCT.—In his declaration of intention to become citizen of the Philippines, petitioner stated that he had not been convicted of any crime and, in paragraph 13 of his petition for naturalization he alleged that he had conducted himself "in a proper and irreproachable manner" during the entire period of his residence in the Philippines in his relations with the constituted government. Yet the record shows that petitioner had violated a building municipal ordinance, for which reason he was charged criminally with a violation thereof, convicted therefor, and sentenced to pay a fine of ₱20. In view of this false statement on material matters he made in the declaration of intention and the petition for naturalization, both of which are sworn to, petitioner's conduct has not been irreproachable.
2. ID.; APPLICATION FOR NATURALIZATION MUST BE SUPPORTED BY AFFIDAVIT.—Where the period of residence required for a petitioner for naturalization is 10 years (Section 2, Commonwealth Act 473) the supporting affidavit of character witnesses must show that the latter had known the petitioner at least 10 years prior to the filing of petition, otherwise the petition is fatally defective and does not comply with the requirement of the law which provides that petition for naturalization should be supported "by affidavit of at least two credible persons, stating that they * * * personally know the petitioner to be a resident of the Philippines for a period of time required by this Act * * *." (Sec. 7 of Commonwealth Act 473).
3. ID.; WHERE THE PETITIONER'S CHILDREN STUDY IN PRIVATE SCHOOLS; EVIDENCE OF RECOGNITION NECESSARY.—Where the petitioner's children are enrolled in private schools, it is necessary for him to prove that said private schools are as required in section 2, paragraph 6 of the Revised Naturalization Law, recognized by our Government and that Philippine history, government and civics are taught therein as part of the curriculum.

APPEAL from an order of the Court of First Instance of Manila. Amparo, *J.*

The facts are stated in the opinion of the Court.

De la Cruz & De la Cruz for petitioner and appellant.
Solicitor General Ambrosio Padilla and *Solicitor Isidro C. Borromeo* for the oppositor and appellee.

CONCEPCIÓN, *J.:*

Petitioner Sy Chhut *alias* Tan Bin Tiong seeks a review of an order of the Court of First Instance of Manila denying his petition for naturalization as citizen of the Philippines.

It appears that in his declaration of intention to become such citizen, appellant stated that he had not been

convicted of any crime and that, in paragraph 13 of his petition for naturalization, appellant alleged that he had conducted himself "in a proper and irreproachable manner", during the entire period of his residence in the Philippines, in his relations with the constituted government. However, the record shows that petitioner had ordered the construction of a two story building, in the City of Manila, without securing the building permit required by a municipal ordinance, for which reason he was charged criminally with a violation thereof, convicted therefor, and sentenced to pay a fine of ₱20, which was paid on August 21, 1951. Hence, he made in the declaration of intention and the petition for naturalization, both of which are sworn to, false statements on material matters. Apart from thus indicating that appellant's conduct has not been irreproachable, the foregoing reflects against his moral character.

Appellant would have us believe now that said false statements were unintentional, for he was unaware of his prosecution and conviction, and of the fine imposed upon him, and that the same was paid, without his knowledge or consent, by Inocencio Tan, a building contractor who undertook the construction of said building, according to a motion for new trial filed by appellant and the affidavit of said Inocencio Tan, attached to said motion, which was denied by the lower court. Appellant's brief shows, however, that Inocencio Tan was not a building contractor. Besides, being the defendant in said criminal case, appellant is presumed to have been served with the corresponding notice, and, on the witness stand, he did not deny receipt thereof. Again, appellant admitted on the witness stand his prosecution and conviction, but he testified that the fine imposed was *₱10* only. This is another circumstance that reflects his lack of veracity and poor moral character.

Apart from this, appellant's petition does not comply with section 7 of our Revised Naturalization Law, which provides that:

> "* * * The petition must be filed by the appellant in his own hand writing and be supported by affidavit of at least two credible persons, stating that they are citizens of the Philippines and personally know the petitioner to be a resident of the Philippines for a period of time required by this Act and a person of good repute and morally irreproachable * * *."

The period of residence required for appellant herein is ten (10) years (section 2, Commonwealth Act No. 473). Yet, the affidavit of witness Arcebal, attached to appellant's application, states that the former had known the latter since 1946, or less than ten (10) years prior to February 13, 1954, when said petition was filed. Hence, said petition is fatally defective. (Robert Cu *vs.* Repub-

lic, G. R. No. L–3018, July 18, 1951, and Awad *vs.* Republic, G. R. No. L–7685, September 23, 1955.) It is true, that, testifying for appellant herein, Arcebal said that the year 1946 must have been written in his affidavit due to a "clerical or typographical" mistake. But, regardless of the veracity of this explanation, the law requires that the petition for naturalization be supported "by affidavit of at least two credible persons, *stating that they* * * * *personally know the petitioner* to be a resident of the Philippines *for a period of time required* by this Act * * *." (Sec. 7.) This requirement has not been fulfilled.

Lastly, appellant testified that his daughter Marcela Sy is enrolled in the Chang Kai Shek High School, and his children Manuel Sy and Juanita Sy are studying in the Chinese Republic School. There is no evidence that these private schools are recognized by our Government and that Philippine history, government and civics are taught therein as part of the curriculum. Hence, compliance with section 2, paragraph 6, of the Revised Naturalization Law has not been established.

WHEREFORE, the order appealed from is hereby affirmed, with costs against the petitioner.

IT IS SO ORDERED.

Parás, C. J., Bengzon, Padilla, Montemayor, Reyes, A., Bautista Angelo, Reyes, J. B. L., Endencia, and *Félix, JJ.*, concur.

Order affirmed.

[No. L-11656. April 18, 1958]

MARÍA DAVID, petitioner, *vs.* FRANCISCO DE LA CRUZ and BERNARDO CALMA, respondents

JUDGMENT; LANDLORD AND TENANT; REINSTATEMENT; RESERVATION TO FILE NEW ACTION FOR DAMAGES.—Where tenants filed a complaint on a single cause of action against their landlord for reinstatement due to their illegal ejectment or removal from their landholdings which entitles them for reinstatement and damages, and a judgment is rendered ordering their reinstatement, and reserving to them the right to file a new action for the recovery of losses and damages there being no sufficient evidence to sustain an award of damages in their favor; *Held* that the reservation to file a new and separate action ordered in the judgment is erroneous. The rule is that a single cause of action cannot be split up into two or more parts so as to be made the subject of different complaints (sec. 3, Rule 2, Rules of Court). It is aimed at preventing repeated litigations between the same parties in regard to the same subject of controversy and to protect the defendant from unnecessary vexation (Bachrach Motor Co. *vs.* Icarangal, 68 Phil. 287; 1 C. J., 1107.)

REVIEW by certiorari of a decision of the Court of Agrarian Relations.

The facts are stated in the opinion of the Court.

Nicias O. Mendoza for petitioner.
Victoriano M. David for respondents.

REYES, J. B. L., *J.:*

This case was originally started in the Court of Industrial Relations by a complaint for reinstatement filed by respondents Bernardo Calma and Francisco de la Cruz against their landlord Maria M. David, who allegedly ejected them from their landholdings without just and lawful cause, and for damages allegedly caused to them by their unlawful ejectment. David answered, claiming that respondents were not illegally ejected by her but that they abandoned, left, or voluntarily surrendered their landholdings.

Trial was then commenced in the Industrial Court, but was not terminated because the court lost jurisdiction over the case upon the creation of the Court of Agrarian Relations, to which the records were transferred under the provisions of Section 7, Republic Act No. 1267, as amended. The Court of Agrarian Relations continued the trial of the case and thereafter, rendered judgment ordering respondents' reinstatement, and reserving to them the right to file a new action for the recovery of losses and damages because "the evidence of record does not contain enough data upon which to base a fair adjudication of the damages said petitioners are entitled to".

Not satisfied with the judgment of the court below, landlord Maria M. David appealed to this Court by peti-

tion for review, raising a single question—whether or not the lower court erred in reserving to respondents Calma and De la Cruz the right to file a new and separate action for damages, there being no sufficient evidence in this case to sustain an award of damages in their favor.

We find merit in the petition.

The rule is that a single cause of action can not be split up into two or more parts so as to be made the subject of different complaints (section 3, Rule 2, Rules of Court). The rule is aimed at preventing repeated litigations between the same parties in regard to the same subject of the controversy and to protect the defendant from unnecessary vexation (Bachrach Motor Co. *vs.* Icarangal, 68 Phil. 287; I. C. J. 1107).

Herein respondents have but one cause of action against petitioner, their illegal ejectment or removal from their landholdings, which cause of action however entitles them to two claims or remedies—for reinstatement and damages. As both claims arise from the same cause of action, they should be alleged, as in fact they were alleged, in a single complaint.

Having thus included in their complaint not only a claim for reinstatement but also a claim for damages, respondents had the burden and duty of proving both claims satisfactorily (section 70, Rule 123, Rules of Court). But while respondents succeeded in proving their illegal ejectment and their right to reinstatement, they, however, failed to prove the damages allegedly suffered by them. In view of their failure to establish their claim for damages by satisfactory evidence, such claim should, therefore, have been unqualifiedly dismissed. The action of the lower court of reserving to respondents the right to file another action to prove exactly the same damages that they had all the opportunity to prove in this case, would not only result in a multiplicity of suits, but even allow the filing of another action between the same parties for a claim that has already been fully tried, litigated, and heard in this case, all to the prejudice of the petitioner as well as of the courts who would have to try the case anew. Moreover, the decision appealed from is strongly suggestive of the fact that the master mind in the tenant's illegal dispossession was Patricio David, the brother of petitioner Maria M. David.

Upon the other hand, respondents, both in their answer and their memorandum, urge the amendment of the decision appealed from so as to include an award of damages in their favor, which they claim is supported by sufficient evidence on record, or, in the alternative, the return of this case to the court below for the reception of additional evidence on the question of damages, in

the interest, it is claimed, of a more speedy administration of justice. Respondents, however, did not themselves appeal from the lower court's decision and so can not, as mere appellees, ask for a substantial modification therefor. Settled is the role that an appellee can not impugn the correctness of a judgment not appealed from by him, and while he may make counterassignment of errors, he can do so only to sustain the judgment on other grounds but not to seek modification or reversal thereof (Gorospe *vs.* Peñaflorida, L–11583, July 19, 1957; Lapuz *vs.* Sy Uy, L–10079, May 17, 1957; Pineda & Ampil Mfg. Co. *vs.* Bartolome, L–6904, September 30, 1954).

WHEREFORE, the judgment appealed from is modified in the sense that the reservation to respondents of the right to file another action for damages is eliminated, and instead, their claim for damages is dismissed with prejudice. In all other respects, said judgment is affirmed. Costs against respondents Francisco de la Cruz and Bernardo Calma.

SO ORDERED.

Bengzon, Montemayor, Reyes, A., Bautista Angelo, Labrador, Concepción, Endencia, and *Félix, JJ.,* concur.

Parás, C. J., reserves vote.

Judgment affirmed with modification.

DECISIONS OF THE COURT OF APPEALS

[No. 18319-R. June 12, 1958]

TAY LIAN GROCERY, INC., plaintiff and appellant, *vs.* DE LA RAMA STEAMSHIP CO., INC., defendant and appellee

1. COMMON CARRIERS; CONTRACT FOR CARRIAGE OF GOODS BY SEA; CARRIAGE OF GOODS BY SEA ACT NOT REPEALED BY THE NEW CIVIL CODE.—The repealing clause (Article 2270) of the New Civil Code neither expressly nor impliedly repeals the Carriage of Goods by Sea Act (Commonwealth Act No. 65). The New Civil Code contains a proviso to the effect that the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration (Article 1753); and that in all matters not regulated by the Civil Code, the rights and obligations of common carriers shall be governed by the Code of Commerce and by special laws (Article 1766). The carriage of Goods by Sea Act is a special law which is suppletory to the Code of Commerce, and provides for whatever deficiencies said Code may have with respect to contracts for carriage of goods by sea (Section 1 of the Carriage of Goods by Sea Act). Therefore, the provisions of the New Civil Code, more particularly Title VII, Chapter 3, Section 4, govern the rights and obligations of common carriers in all contracts for the carriage of goods by sea from foreign ports to Philippine ports. In the absence of any provision therein, the Code of Commerce applies. And in default of either Code, then the Carriage of Goods by Sea Act governs.

2. ID.; ID.; LOSS, DESTRUCTION OR DETERIORATION OF GOODS TRANSPORTED; EXTENT OF LIABILITY OF COMMON CARRIER.—Our New Civil Code provides that common carriers are not responsible for the loss, destruction or deterioration of the goods if caused by the character of the goods or defects in the packing or in the containers (Article 1734, paragraph 4); and that in all cases not falling under the exceptions enumerated by Article 1734, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed the extraordinary diligence required by Article 1733 (Article 1735). The provision of the Code of Commerce, in Article 361, states that the merchandise are to be transported at the risk and venture of the shipper, if the contrary has not been expressly stipulated; therefore, the damage and impairment suffered by the goods during transportation due to fortuitous event, force majeure, or the *nature and inherent defect of the goods,* shall be for the account and risk of the shipper. From a correlation of the pertinent provisions of the New Civil Code, the Code of Commerce and the Carriage of Goods by Sea Act, there emerges the rule that as long as the damage to the goods was due purely to the inherent nature or defect of the goods or of the containers thereof, the carrier cannot be held responsible.

APPEAL from a judgment of the Court of First Instance of Manila. Tan, *J.*

The facts are stated in the opinion of the Court.

Ildefonso M. Bleza, for plaintiff and appellant.

Ross, Selph, Carrascoso & Janda, for defendant and appellee.

OCAMPO, *J.:*

In the Court of First Instance of Manila, Tay Lian Grocery, Inc. brought an action against the De la Rama Steamship Co., Inc. for the recovery of damage to cargo in the amount of ₱7,174.18 plus legal interest thereon from the filing of the complaint until full payment, ₱800 for attorney's fees and costs of suit. In its answer, defendant alleged that the damage suffered by plaintiff's cargo are not due to its fault; and that the damage, if any, was due to an exempted cause. After trial, the lower court rendered judgment dismissing the complaint with costs against plaintiff.

The case is now on appeal before this Court. Plaintiff-appellant claims that:

"1. The court *a quo* erred in applying the provisions of the Carriage of Goods by Sea Act of the United States of America to the case at bar, it being clear that the same had been automatically repealed upon the advent of the New Civil Code in 1950.

"2. The court *a quo* erred in not applying the provisions of the New Civil Code especially the provisions of the Civil Code relating to common carriers to the present case.

"3. The court *a quo* erred in holding that the preponderance of evidence lies heavily to the side of the defendant-appellee and in absolving it from any liability to the plaintiff-appellant."

From the record, it appears that the parties herein stipulated on the following facts:

"1. That the plaintiff and the defendant are both domestic corporations with offices in the City of Manila, and that the defendant De La Rama Steamship Company was the operator and/or charterer of the M/S Doña Alicia, a sea-going vessel at the time material to the case;

"2. That in the month of February, 1956, plaintiff, as consignee, received a certain shipment of cargo consisting of 1750 cartons of Chopped Beef, 24 tins of a carton, carried from San Francisco, California, U.S.A. under Bill of Lading No. 16 on board M/S Doña Alicia;

"3. That 865 cartons of said shipment were examined, inspected and surveyed by the R. J. del Pan & Company, duly licensed Marine and Cargo Surveyors, at the plaintiff's Pasig River bodega, Muelle de Binondo, Manila, from February 23, 1956, to February 28, 1956 when inspection and survey were completed, as per Report No. 2593, dated February 28, 1956, issued by the aforesaid cargo surveyors, copy of which is attached as Annex "A";

"4. That as shown by the survey and inspection report Annex "A" plaintiff sustained damages amounting to ₱6,714.18, equivalent to 49½ per cent of the cargo in question;

"5. That as per Bill of Lading, hereto attached as Annex "B", the damaged cargo was loaded at San Francisco, California, U.S.A. on the M/S Doña Alicia on January 27, 1956, and that according also to said Bill of Lading, the shipment was received on the same date from the Western Pacific Union Railroad Company thru Bill

of Lading No. 431 dated at Chicago, Illinois, U.S.A. on January 23, 1956;

"6. That due to the damage described above, provisional claim dated February 23, 1956 was filed by plaintiff against the defendant who received it on the same date, followed by a formal claim, dated March 6, 1956, for the amount of ₱3,827.54, which was received by the defendant on the same date, as per attached Annexes "C" and "D";

"7. That in answer to the claim mentioned in the preceding paragraph hereof, the defendant offered to pay the amount of ₱37.94 on March 9, 1956, as per copy of the letter from the defendant, hereto attached as Annex "E";

"8. That the tins of chopped beef contained in the cartons were examined and analyzed by a duly licensed chemist who reported that the cause of the damage to the 20,731 tins (out of a total shipment of 41,880 tins) or equivalent to 49½ per cent as per Survey Report Annex "A", was fresh water, copy of the analysis report being hereto attached as Annex "F";

"9. That in rejecting the claim of plaintiff, the defendant stated that the records show the cargo was fully discharged from the ship in good order and condition with the exception of 5 cartons for which an offer of compromises was made in the aforestated amount of ₱37.94 as shown by Annexes G, G–1 to G–21, inclusive, discharge tally sheets bearing the signatures of the ship's checker and Delgado Bros. Inc.'s checker, Arrastre contractors at the time, showing a total discharge of 1750 cartons from the vessel;

"10. That the shipment in question was forwarded to the plaintiff by the B. V. Martinez & Co., Customs Brokers and Forwarders, as per delivery receipts attached hereto as Annexes H, H–1 to H–4, inclusive, showing 1750 cartons delivered with the notation "all cartons wet";

"11. That when the vessel arrived in Manila on February 21, 1956, the holds were surveyed by the C. B. Nelson & Company who made Survey Report No. 156/283, dated February 22, 1956, copy of which is attached as Annex "I";

"12. That when the shipment was loaded, first on board train at Chicago and later on board the M/S Doña Alicia at San Francisco, Calif. on January 27, 1956, it was winter time in the United States and the weather, therefore, was very cold, so that when the ship undertook the voyage to the Philippines, it had to encounter change of climate upon reaching the Pacific Area from which place up to the port of destination, which was Manila, the climate was hot with the consequence that unavoidable sweating occurred on the cargo producing fresh water which caused the tins becoming rusty.

13. That the parties above hereby reserve the right to present additional evidence which may be deemed necessary to prove other facts not covered in this stipulation."

We find untenable plaintiff-appellant's claim that the Carriage of Goods by Sea Act (Commonwealth Act No. 65) had been repealed upon the enactment of our New Civil Code in 1950. The repealing clause (Article 2270) of the New Civil Code neither expressly nor impliedly repeals said Act. We are not unmindful of the provisions of the New Civil Code to the effect that the law of the country to which the goods are to be transported shall govern the liability of the common carrier for their loss, destruction or deterioration (Article 1753); and that in all matters not regulated by the Civil Code, the rights

and obligations of common carriers shall be governed by the Code of Commerce and by special laws (Article 1766). The Carriage of Goods by Sea Act is a special law which is suppletory to the Code of Commerce, and provides for whatever deficiencies said Code may have with respect to contracts for carriage of goods by sea (Section 1 of the Carriage of Goods by Sea Act). Therefore, the provisions of the New Civil Code, more particularly Title VII, Chapter 3, Section 4, govern the rights and obligations of common carriers in all contracts for the carriage of goods by sea from foreign ports to Philippine ports. In the absence of any provision therein, the Code of Commerce applies. And in default of either Code, then the Carriage of Goods by Sea Act governs.

Our New Civil Code provides that common carriers are not responsible for the loss, destruction or deterioration of the goods if caused by the character of the goods or defects in the packing or in the containers (Article 1734, paragraph 4); and that in all cases not falling under the exceptions enumerated by Article 1734, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed the extraordinary diligence required by Article 1733 (Article 1735).

The provision of the Code of Commerce pertinent to this case, is Article 361 which states that the merchandise are to be transported at the risk and venture of the shipper, if the contrary has not been expressly stipulated; therefore, the damage and impairment suffered by the goods during transportation due to fortuitous event, force majeure, or the *nature and inherent defect of the goods,* shall be for the account and risk of the shipper.

There is no express stipulation in the bill of lading (Annex B of the Stipulation of Facts) that the goods were to be shipped at the risk and venture of the carrier. The fact is that Section 1 thereof explicitly states that the provisions of the Carriage of Goods by Sea Act of the United States of America are deemed incorporated therein as part of the provisions thereof. The applicable provision is Section 4, Subsection (2) (*m*) of said Act which provides that the carrier shall not be liable for loss or damage arising from the inherent defect, quality or vice of the goods.

From a correlation of the pertinent provisions of the New Civil Code, the Code of Commerce and the Carriage of Goods by Sea Act, there emerges the rule that as long as the damage to the goods was due purely to the inherent nature or defect of the goods or of the containers thereof, the carrier cannot be held responsible.

According to the stipulated facts the cause of the damage to the 20,731 tins of chopped beef, was *fresh water*

(paragraph 8, Stipulation of Facts). At the time the shipment of 1750 cartons of chopped beef were loaded on board the M/S Doña Alicia on January 27, 1956 at San Francisco, California, it was winter time in the United States. The parties themselves are agreed that the weather at that time was very cold, so that when the ship undertook the voyage for the Philippines, it had to encounter a change of climate upon reaching the Pacific Area from which place up to the port of destination which was Manila, the climate was hot with the consequence that *unavoidable* sweating occurred on the cargo producing fresh water which caused the tins to become rusty (paragraph 12, Stipulation of Facts).

Plaintiff-appellant knows, or should have known the weather conditions obtaining in the port of departure, San Francisco, California, United States, and the port of destination, Manila, Philippines. It likewise cannot plead ignorance of the effect of the highly-marked change in temperature on the cargo. It knew fully well that the change in weather conditions would result in the formation of "perspiration" on the tins of chopped beef, and this fresh water would eventually result in the rusting of the cans. It did not ask that the cargo be stowed in refrigirated chambers. Instead it paid less freight charges, and thus gambled on the odds that the tin cans would not be affected by the change of climate. Probably, it banked on the possibility that the tin cans would withstand the corrosive effect of "sweating". It so happened, however, that the tin cans were not of such a quality as could resist the corresive effect of the fresh water produced thereon by the marked change of weather conditions. Inasmuch as plaintiff-appellant gambled with the effect of the change of temperature, and paid less freight charges, it cannot now lay the blame on defendant-appellee, for the cause of the damage is plainly attributable to the plaintiff-appellant itself and to the inherent nature of the tin cans.

Once it has been shown that the loss was due to an excepted cause, as in the present case, then the burden of proving negligence is shifted to the shipper. Plaintiff-appellant, however, did no take advantage of its opportunity to present evidence showing that defendant-appellee did not observe extraordinary diligence in the vigilance over the goods and that such negligence resulted in the damages complained of. Furthermore, it appears from the report of surveyors, C. B. Nelson & Company (Annex A of the Stipulation of Facts), that the hatches of the M/S Doña Alicia were tightly closed, so that salty water could not have penetrated into the holds thereof. Defendant-appellee had exercised the necessary diligence in the care of the goods.

The American case cited by appellant, to the effect that the carrier has the duty of informing the shipper that during the trip, the animals shipped might become overheated for lack of water (Pec. *vs.* Chicago Great Western Railroad Co., 138 Iowa 187, Vol. 10, Corpus Juris p. 102), is inapplicable herein, for the shipper (plaintiff-appellant) expressly admitted knowledge of the fact that "sweating" of his cargo was unavoidable during the trip whereby the goods were subjected to such disparate climatic conditions. Neither is the case of Hashim *vs.* Rocha & Co. (18 Phil. 315) applicable, considering that the damage herein was not due to exposure to the elements, as was true in said case where a shipment of potatoes were damaged as a result of a two-day exposure to the hot sun, without ventilation.

For all the foregoing considerations, and finding the appealed decision to be in full accord with the facts and the law, we hereby affirm the same with costs against plaintiff-appellant.

Santiago and *San Jose, JJ.*, concur.

Judgment affirmed.

[No. 19806-R. June 12, 1958]

ROBERTA DIAZ Y CURZ (VDA. DE SANTOS), petitioner and appellee, *vs.* AMPARO SANTOS DIAZ, PAZ SANTOS DIAZ, IGNACIO SANTOS DIAZ and JULIO C. TALAGON, oppositors and appellants.

1. LAND REGISTRATION; REGISTRATION OF ADVERSE CLAIM UNDER SECTION 110, ACT 496; REQUISITES.—In order that the provision of section 110 of the Land Registration Act may be availed of it is necessary that the claimant have a right or interest in registered land adverse to the registered owner and that the same arise subsequent to the original registration. The children of a living parent have no such right or interest, which could be the subject of an adverse claim. All that they have is an expectancy, contingent, inchoate and dependent entirely upon the death of the parent. Before the death of the decedent nothing is or can be acquired by heriditary title. This is why simple donations which may be inofficious because the donor has given more than what he can give by will (Article 752) cannot be so declared and correspondingly reduced in advance of the donor's death. It is only as of that moment that the value of his estate and the legitime of the compulsory heirs can be known; and only then, therefore, that it can be determined whether or not the legitime has been impaired by the gratuitous dispositions of the decedent during his lifetime.

2. ID.; ID.; ID.; INTEREST OF PRESUMPTIVE HEIR, NOT ADVERSE UNDER THIS LEGAL PROVISION.—The interest of a presumptive heir—if his expectation to inherit can be considered an interest at all—is certainly not adverse within the meaning of Section 110 of the Land Registration Act. It is successory in character, and comes into being upon the demise of the parent. Meanwhile, the latter, vis-a-vis the heirs, has absolute freedom of disposal, subject only to a future contingency, namely, that in the post-mortem liquidation of his estate it shall appear that he has not given by way of donation more than what he could have given by will. Otherwise what he has thus given will be reduced in order to preserve the legitime of those entitled thereto, in accordance with Article 771 of the Civil Code.

APPEAL from an order of the Court of First Instance of Rizal. Enriquez, *J.*

The facts are stated in the opinion of the Court.

Reyes & Garduce and *Florentino M. Guanlao*, for oppositors and appellants.

Carlos, Laurea and *Associates*, for petitioner and appellee.

MAKALINTAL, *J.:*

Petitioner Roberta Diaz y Cruz, appellee here, is the mother of oppositors and appellants Ignacio Santos Diaz, Amparo Santos Diaz and Paz Santos Diaz, as well as of the deceased Teresa Santos Diaz, wife of Julio C. Talagon, who is representing his daughters Monsarret and Mariquita Talagon. Petitioner has 5 other living children, namely, Jose A. Santos Diaz, Timotea Santos Diaz Arciaga,

Concepcion Santos Diaz-Cribe, Antonio Santos Diaz and Manuel Santos Diaz.

Petitioner was the owner of considerable properties, consisting of lands situated in Manila, Quezon City, Pasay, Pasig and Mariquina, Rizal, and of personalities, such as a car, shares of stock and cash deposited in the bank. Among those lands were lots Nos. 6 and 7, plan Psu–47106, Swo–21350, covered by transfer certificates of title Nos. 32874 and 32875, respectively. Under dates of April 25 and 26, 1956, herein oppositors caused to be registered in the office of the Register of Deeds for the province of Rizal and to be annotated on the aforesaid certificates of title two adverse claims pursuant to section 110 of Act No. 496. In those claims they alleged that their mother, petitioner herein, had made excessive and inofficious donations of her properties in favor of her other five children to the exclusion of the claimants, amounting to deprivation and impairment of their legitime They further alleged that their mother, "being very old and sickly, . . . may not at all times be in a condition to comprehend what she is signing—infering from what she has been signing for the last two years."

On July 11, 1956 petitioner filed a petition asking that the adverse claims annotated on the titles covering lots Nos. 6 and 7, and on transfer certificate of title No. 44069 which was issued after she sold said lots on April 26, 1956 to certain third persons, be declared invalid and that their registration be accordingly cancelled. Oppositors, now appellants, presented an opposition and after hearing the Court entered the following order granting the petition:

"Petitioner prays for the cancellation of the adverse claims noted on her Transfer Certificates of Titles Nos. 32874 and 32875 (44069) by Ignacio Santos Diaz, Amparo Santos Diaz, Paz Santos Diaz and Julio C. Talagon, on behalf of his daughters, Monserrat and Mariquita Talagon.

"After due consideration of the pleadings and the evidence adduced by the parties, this Court finds that the adverse claims are substantially without basis, considering that adverse claimants are mere prospective heirs who have no part or interest in the properties until the death of petitioner herein, Roberta Diaz y Cruz (Article 777, Civil Code of the Philippines).

"WHEREFORE, the petition is hereby granted, ordering the cancellation of the adverse claims made at the instance of the parties above cited, now recorded on Transfer Certificates of Title Nos. 32874 and 32875 (now 44069)."

The issue is quite simple. May the children of a living person who disposes of her properties by acts *inter vivos*, as by donations to other children, file adverse claims under Section 110 of the Land Registration Act on the theory that such donations impair their legitime? Section 110 provides:

"Whoever claims any part or interest in registered land adverse to the registered owner, arising subsequent to the date of the

original registration, may, if no other provision is made in this Act for registering the same, make a statement in writing setting forth fully his alleged right or interest, and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land in which the right or interest is claimed.

"The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration as an adverse claim, and the court, upon a petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim and shall enter such decree therein as justice and equity may require. If the claim is adjudged to be invalid, the registration shall be cancelled. If in any case the court after notice and hearing shall find that a claim thus registered was frivolous or vexatious, it may tax the adverse claimant double or treble costs in its discretion."

In order that this provision of the law may be availed of it is necessary that the claimant have a right or interest in registered land adverse to the registered owner and that the same arise subsequent to the original registration. The children of a living parent have no such right or interest, which could be the subject of an adverse claim. All that they have is an expectancy, contingent, inchoate and dependent entirely upon the death of the parent. It is a principle too well settled to require any degree of discussion that sucsessional rights are transmitted only from the moment of the death of the decedent. (Article 777, Civil Code.) Before that time nothing is or can be acquired by hereditary title, This is why simple donations which may be inofficious because the donor has given more than what he can give by will (Article 752) cannot be so declared and correspondingly reduced in advance of the donor's death. It is only as of that moment that the value of his estate and the legitime of the compulsory heirs can be known; and only then, therefore, that it can be determined whether or not the legitime has been impaired by the gratuitous dispositions of the decedent during his lifetime.

The interest of a presumptive heir—if his expectation to inherit can be considered an interest at all—is certainly not adverse within the meaning of the legal provision invoked by appellants. It is successory in character, and comes into being upon the demise of the parent. Meanwhile, the latter, vis-a-vis the heirs, has absolute freedom of disposal, subject only to a future contingency, namely, that in the post-mortem liquidation of his estate it shall appear that he has not given by way of donation more than what he could have given by will. Otherwise what he has thus given will be reduced in order to preserve the legitime of those entitled thereto, in accordance with article 771 of the Civil Code.) which says:

"Donations which in accordance with the provisions of article 752, are inofficious, bearing in mind the estimated net value of the donor's property at the time of his death, shall be reduced with regard to the excess; but this reduction shall not prevent the donations from taking effect during the life of the donor, nor shall it bar the donee from appropriating the fruits.

"For the reduction of donations the provisions of this Chapter and of articles 911 and 912 of this Code shall govern."

Appellants contend that the donations made by petitioner of her properties were not of her own free will but were induced by the influence of some of her children, particularly one of them. Their remedy, however, is not to be found in having adverse claims registered under Section 110 of the Land Registration Act. They could have such donations annulled in the proper actions. Indeed they have initiated steps in the right direction by filing a proceeding in the Court of First Instance of Pasig to have a guardian appointed for their aged mother. They have, as stated in appellee's brief, filed notices of *lis pendens* concerning her properties. If there is any truth to their allegation concerning the circumstances under which their mother had been disposing of those properties they should be able to find adequate protection in the processes marked out by law for that purpose. Not, however, in the provision of the Land Registration Act relied upon by them in this case.

WHEREFORE, there being no error in the order appealed from, the same is hereby affirmed, with costs against appellants.

SO ORDERED.

De Leon and *Castro, JJ.*, concur.

Order affirmed.

[No. 17738–R. June 17, 1958]

FLORINO LISING, plaintiff and appellee, *vs.* FRANCISCO ROSALES and ISIDRA Z. SILVA, defendants and appellants; FRANCISCO ROSALES and ISIDRA Z. SILVA, third-party plaintiffs and appellants, *vs.* CESARIO ALCANTARA, third-party defendant and appellee.

1. NEGLIGENCE; DAMAGES; ACTION TO RECOVER CIVIL LIABILITY ARISING FROM "CULPA AQUILIANA"; MOTION TO DISMISS CIVIL ACTION IMPROPER NOTWITHSTANDING ACQUITTAL OF ACCUSED IN THE CRIMINAL CASE.—Responsibility for negligence under Article 2178 of the Civil Code of the Philippines, "is entirely separate from negligence under the Penal Code;" (Article 2177, Civil Code) and a "*quasi delict* or *culpa aquiliana* is a separate legal institution under the Civil Code, with a substantivity all its own, and individuality that is entirely apart and independent from a delict or crime." (Barredo *vs.* Garcia, et al., 73 Phil., 607.) It is considered "separate and apart from the criminal proceeding, not subordinate to the outcome of the latter." (Dyogi, et al., *vs.* Yatco, G. R. L–9623, January 22, 1957.) Hence, even after the acquittal of an accused in a criminal case for damage to property through reckless imprudence, a motion to dismiss in an action to recover civil liability not arising from criminal negligence under the Penal Code, but from *culpa aquiliana* or *quasi delict* under Article 2176 of the Civil Code of the Philippines can not be entertained.
2. COMMON CARRIERS; RIGHT OF WAY AT STREET INTERSECTIONS; ORDINARY CARE REQUIRED OF ONE HAVING RIGHT OF WAY AT INTERSECTION.—"The mere fact that one vehicle has the right of way over another at a street or highway intersection does not relieve the driver of the vehicle thus favored from the duty of exercising due care to avoid collision at the intersection. The exercise of ordinary care may require one having the right of way at a street intersection to yield it. In any event, regardless of the right of way, it is the duty of one traveler, after having discovered the peril of another, to use reasonable care to avoid injury to him." (25 Am. Jur. 507.)
3. EVIDENCE; PROOF OF CIVIL LIABILITY ARISING FROM NEGLIGENCE; PREPONDERANCE OF EVIDENCE ENOUGH.—Although the negligence of an operator of a vehicle is not of such degree as to impose a criminal liability, it is enough to establish liability on a mere civil issue which requires a mere preponderance of evidence (65 C. J. S. 321; Copeland *vs.* State, 49 A. L. R. 606; 38 Am. Jur. 650; Article 28, New Civil Code).

APPEAL from a judgment of the Court of First Instance of Manila. Lucero, *J.*

The facts are stated in the opinion of the Court.

Manuel A. Concordia, Anderson Maghirang, Ernesto Catimbang and *Walfredo P. Catolos,* for defendants-third-party plaintiffs and appellants.

San Juan, Africa & Benedicto, for plaintiff and appellee.

CABAHUG, *J.:*

Between 9:30 and 10:30 in the morning of September 30, 1951, jeepney bearing plate number TPU–4060, driven by Florino Lising, and Miladi taxicab with plate number

623, driven by Francisco Rosales, figured in a collision at the intersection of Forbes and M. Earnshaw streets of this city. As a consequence thereof, two criminal cases were filed against Rosales: One for less serious physical injuries through reckless imprudence, criminal case numbered T–53153 of the Municipal Court of Manila, and another for damage to property through reckless imprudence docketed as criminal case numbered 17665 of the Court of First Instance of Manila. During the pendency of the first case, that is on November 15, 1951, (the second case was filed on January 14, 1952) Florino Lising instituted this civil action against Francisco Rosales and Isidra Z. Silva, the operator of the taxi duly authorized by the Public Service Commission, seeking the recovery of the sum of ₱5,000 representing damages suffered by plaintiff and his family, plus an amount of ₱500 for the damage caused to the jeepney, and ₱14 per day from October 1, 1951 until said vehicle could again be put into operation, and costs. In an answer dated November 29, 1951, defendants set up a counterclaim in the sum of ₱2,000, which counterclaim was denied by plaintiff on December 12, 1951. On January 18, 1952, with the trial Court's leave, defendants filed a third-party complaint against Cesario Alcantara, owner and operator of the jeepney, praying that the said third-party defendant be condemned to pay jointly with plaintiff the amount of damages asked for by defendants in their answer. On November 10, 1952, third-party defendant filed his answer denying the material averments of the third-party complaint and asking for ₱500 for attorney's fees.

Defendant Isidra Z. Silva died on April 29, 1955 and she was properly substituted by her heirs upon orders of the Court.

After the denial of defendants-third-party plaintiffs' motion to dismiss and/or suspend the proceedings in the case at bar, the trial went on and upon its termination the Court below rendered its decision, the dispositive part of which reads:

"FOR THE FOREGOING CONSIDERATIONS, the Court hereby renders judgment, sentencing defendant Francisco Rosales and the estate of Ysidra Z. Silva to pay, jointly and severally, to the plaintiff the sum of ₱1,500, with 6 per cent interest thereon from November 15, 1951, until full payment, and the costs of this action.

"The defendants' counterclaims against Florino Lising and Cesario Alcantara, as well as the third-party complaint by defendants against Cesario Alcantara, are hereby dismissed. The counterclaim of Cesario Alcantara against defendants-third-party plaintiffs is likewise dismissed."

In this their appeal from the above judgment defendants now contend firstly that the trial Court erred in not granting their motion to dismiss. We find this first assigned error to be without merit. Even conceding

arguendo that the acquittal of appellant Rosales in criminal case T–53153 extinguished appellant's civil liability, the said motion to dismiss could not have been granted just the same because of the pendency of another criminal case arising from the same collision. And even now that criminal case 17665 has been finally decided with the acquittal of Rosales by this Tribunal on the ground of double jeopardy in CA–G. R. No. 14394–R, the motion to dismiss can still not be entertained because it is clear, from a reading of the complaint, that the present action has been instituted to recover a civil liability not arising from criminal negligence under the Penal Code, but from *culpa aquiliana* or *quasi delict* under article 2176 of the Civil Code of the Philippines. Responsibility for negligence under this article "is entirely separate from negligence under the Penal Code;" (Article 2177, Civil Code) and a "*quasi delict* or *culpa aquiliana* is a separate legal institution under the Civil Code, with a substantivity all its own, and individuality that is entirely apart and independent from a delict or crime." (Barredo *vs.* Garcia et al., 73 Phil. 607.) It is considered "separate and apart from the criminal proceeding, not subordinate to the outcome of the latter." (Dyogi, et al. *vs.* Yatco, G. R. L–6923, January 22, 1957.)

With this ruling on the principal question of the extinguishment of civil liability, there is no more need of resolving the incidental one of whether or not appellant Rosales' acquittal in the criminal cases was based on mere reasonable doubt or on the non-existence of the criminal act complained of in those cases.

We shall now proceed to jointly discuss the second, third and fourth assigned errors, they being closely related with each other.

We are in accord with the trial Court's belief that it was the taxi which bumped the jeepney. An examination of the photographic exhibits, particularly exhibits B, B–1 and B–2, shows that the damage on the middle portion of the jeepney, unlike the damage towards its rear, indicates that at this point a force almost perpendicular to the body of the jeepney was applied, thus giving said center portion a bashed in appearance. The damage on the taxi's right front fender likewise shows the same appearance—that of being pushed in—instead of a tendency of the fender to be separated from the main body or hood of the taxi, which would have been the case had the jeepney really sideswiped the already motionless taxi. This is very evident in Exhibit B–2 which shows a frontal view of the taxi. Similarly, in the event of a sideswiping by the jeepney, the damage on it would have been more or less uniform throughout, without such marked difference in the extent of damage between the

center portion and the rear. Exhibits 4 and 5, on which appellants theory of the sideswiping largely rests, may be explained by the fact that the impact was not of such magnitude as would have stopped the jeepney right on the spot, but instead allowed it to continue to travel for a short distance under its own power. Taking this in conjunction with the fact that the nickel plated strip of the car and the metal part of the jeep (Exhibit 5) are relatively pliable and not too rigidly attached to the respective bodies of the vehicles, we have the satisfactory explanation for what appellants call the protrusion of these parts towards the direction of the jeepney's travel. On the other hand, it should be noted that the distance covered by the jeepney from the moment when it allegedly started to swerve to the left and then to the right when it supposedly sideswiped the taxi up to the spot where it finally stopped, as shown in appellants' Exhibit 2, is rather too short for such an intricate maneuver as appellants purport the jeepney to have made, especially considering that when it stopped, the jeepney was in a position parallel to the traffic island and with its front wheels just about in line with the tip of said island. As the learned trial judge correctly and fitly observed, "If it is true that the second movement of the jeepney consisted in swerving it to the right in order to avoid the island, the position of said jeepney would have been almost parallel to M. Earnshaw Street, but this point is belied by the photographs, Exhibits B–2 and B–4, which show that the position of the jeepney was parallel to the island."

In trying to explain the skid marks produced by the taxi's tires upon application of its brakes, which marks were taken by the trial Court as an indication of the vehicle's excessive speed, appellants adduce the absence of evidence as to the kind of surfacing the road had and whether or not it was wet at the time of occurrence. Again, a quick glance at Exhibits B–2 and B–3 shows that the road surfacing was asphalt and that it was dry. Appellants also seem to be under the wrong impression that a vehicle, when braked on an asphalt surfaced road, is more liable to skid or slide than when braked on a road surfaced with broken stones. However, experience tells us that the contrary is true—broken stones have a tendency to give way and provide less traction for tires than asphalt.

To further support their contention that it was the jeepney which was running at a high speed, appellants aver that since the jeepney was running on the left side of the lane, "this means that the jeep must be either speeding or overtaking another vehicle which might have blocked his right . . .;" and that such being the case,

the jeepney was operated in violation of "a traffic law or regulation." Nevertheless, appellants failed to specify just what law or regulation was violated by operating the jeepney on such side of the road, and its mere presence there does not carry a presumption of speeding. It might be observed in this connection that passenger buses or jeepneys are given the right side of a lane in order to facilitate its loading and unloading of passengers and so that it may not clog the faster moving traffic by doing so. And it has been observed that passenger jeepneys running on the left side of a lane have been tolerated by the authorities when said jeepneys, as in the present case, were used for the personal purposes of the particular passengers without any intention of picking up or unloading any passenger on the way. This has been observed to be especially so in highways such as Forbes street where traffic is relatively light and there is a dividing traffic island to separate on coming vehicles. Furthermore, the nature of plaintiff's drive at that time being as it was—"out for a drive and . . . bound for Balara"—it is rather hard to believe that he would be driving at a fast pace. In fact, he even took the long way to Balara by not taking España street.

Easily the most salient of the defenses put up by appellants is their contention that they should be absolved of any blame because when the accident occured, the taxi had the right of way as provided for in section 59 of Act 3992 as impliedly modified by executive order 34, series of 1945. However, this does not entirely free appellant Rosales (and consequently the other appellants) from any blame for negligence, for—

"The mere fact that one vehicle has the right of way over another at a street or highway intersection does not relieve the driver of the vehicle thus favored from the duty of exercising due care to avoid collision at the intersection. The exercise of ordinary care may require one having the right of way at a street intersection to yield it. In any event, regardless of the right of way, it is the duty of one traveler, after having discovered the peril of another, to use reasonable care to avoid injury to him." (25 Am. Jur. 507.)

"A right of way statute is designed to determine precedence between vehicles that would otherwise collide. It is not contemplated by a right-of-way statute that any person should have an exclusive or absolute right of way. The one who arrives at the intersection first is ordinarily entitled to the right of way, regardless of the statute or ordinance giving the right of way to one or the other. Such provisions usually apply only when both arrive at the intersection at or approximately the same time. Thus, the right of precedence at a crossing, whether given by law or established by custom, has no proper application except where the travelers or vehicles on the intersecting streets approach the crossing so nearly at the same time and at such rates of speed that if both shall proceed without regard to the other, a collision or interference between them is reasonably to be expected. In such case, it is the right of the one having the precedence to continue his course, and it is the duty of the other to yield him the right of way." (p. 188, Revised Motor Vehicle Law by Villar and De Vega.)

The undisputed fact that the jeepney's damage started on its center portion towards the rear tends to show that it arrived at the intersection ahead of the taxi and, therefore, it was incumbent upon appellant Rosales to exercise more caution in crossing the intersection and to yield his right of way to the jeepney, especially so because he admitted that he saw the jeepney approaching and even went further to say that it "was running fast." Rosales, "after having discovered the peril of another," should have stopped his taxi not at the point V–1 in Exhibit 2, which is almost at the center of the intersection, but at a point before entering Forbes street, where the Buick car in Exhibit A or Exhibit D–3 in Exhibit D stopped.

The foregoing clearly shows that appellant Rosales was negligent in the operation of his taxicab; and although such negligence is not of such degree as to impose a criminal liability, it is enough to establish liability on a mere civil issue which requires a mere preponderance of evidence (65 C. J. S. 321; Copeland *vs.* State, 49 A. L. R. 606; 38 Am. Jur. 650; Article 28, new Civil Code).

Having thus ruled on the fault and negligence of appellant Rosales, which resulted in the physical injuries of appellee Lising and members of his family and in the damage of appellee Alcantara's jeepney, the inescapable consequence is that appellant heirs of Isidra Z. Silva are jointly liable with Rosales for the damages resulting from said injuries and damage to property, under Article 2180 of the Civil Code.

Contrary to appellants' pretension, appellees did not suppress any evidence which may be presumed to be adverse to their cause. In the light of the conclusions on the first four assigned errors, the testimony of the driver of the Buick car would have been merely corroborative or cumulative. Hence, no unfavorable presumption can arise against appellees for failing to place said driver on the witness stand (Modesto *vs.* Leyva, 6 Phil. 186; People *vs.* Limbo, 49 Phil. 94). Likewise, the non-presentation of the original of motor vehicle accident report exhibit D cannot impose a presumption of adversity because Patrolman Austria, who prepared the report, testified and confirmed and ratified the same. In fact, the said exhibit was admitted as part of his declaration.

The inconsistencies pointed out by appellants in their seventh assigned error regarding the exact number of children in the jeepney at the time of the accident and as to who were on the front seat, refer to minor details and are innocent errors that do not vitiate the entire testimony of appellees' witnesses. And while it is true that no evidence is on record to support the trial Court's observation that it "cannot close its eyes to the manner taxis are being driven in the City of Manila," such

remark does not constitute a reversible error because it is only a passing one and did not serve as the basis of the unfavorable verdict against appellants. In fact, the Court below expressly stated—and we agree with it—that the preponderance of evidence is in favor of appellee Lising "not only because his contention is supported by facts that could not lie but also because of the other considerations hereinbefore mentioned."

The last three assigned errors are but corrollaries of the previous ones. They are, therefore, considered as having been passed upon against appellants.

However, we find that the actual damage of ₱500 for the repair of the jeepney has not been properly established. Appellees failed to comply with their promise to present the proprietor of Bebeng's Welding Shop, where the vehicle was allegedly repaired, for the purpose of identifying the receipt marked as Exhibit C in criminal case 17665; neither was said receipt presented as evidence in the case at bar. There is, therefore, no valid basis for the award of this amount, for while it might be true that the jeepney was repaired and that the repair cost money, the amount is not determined—which determination is necessary for the adjudication of actual or compensatory damages (Article 2199, Civil Code). On the other hand, no evidence is required with respect to moral damages, their award being left to the sound discretion of the Court (Article 2216, *supra*).

WHEREFORE, with the reduction of the damages awarded from ₱1,500 to ₱1,000, the appealed judgment is affirmed in all other respects. Without special pronouncement as to the payment of the costs.

IT IS SO ORDERED.

Dizon and *Peña, JJ.*, concur.

Judgment modified.

[No. 18573-R. June 23, 1958]

REPUBLIC OF THE PHILIPPINES, plaintiff and appellee, *vs.* VICENTE RODRIGUEZ and ALLIANCE INSURANCE & SURETY CO., defendants; ALLIANCE INSURANCE & SURETY CO., defendant and appellant.

1. BONDED WAREHOUSE; LICENSEE MUST PUT UP A BOND PAYABLE TO THE DIRECTOR OF COMMERCE; SECTION 6, ACT 3893.—To promote and facilitate business transactions on rice, the Government authorized the establishment of bonded warehouses by virtue of Act 3893, known as the Bonded Warehouse Act. Its section 6 provides that a person applying for a license to engage in the business of receiving palay or rice for deposit in his warehouse must put up a bond for the security of the depositors, to be payable to the Director of Commerce.

2. ID.; INSURANCE; SIMPLE LOSS-PAYABLE CLAUSE IN POLICY, NATURE AND EFFECT; CASE AT BAR.—The fact that appellee is not the owner of the palay insured and burned does not render the insurance policy void nor does it nullify appellee's right to claim for the payment of its value. Said policy, by providing that "Loss, if any, this Policy shall be payable to the Bureau of Commerce", contains what is termed as a "simple loss-payable clause," which in its essence is a contingent order or assignment of the value of the insured property, should the event insured against occur. (See: 5154-5156, Cyclopedia of Insurance Law, Couch, 6.)

APPEAL from a judgment of the Court of First Instance of Manila. Tan, *J.*

The facts are stated in the opinion of the Court.

Vicente L. Arcega, for defendant and appellant Alliance Insurance & Surety Co., Inc.

Assistant Solicitor General Jose P. Alejandro and *Solicitor Frine C. Zaballero,* for plaintiff and appellee.

CABAHUG, *J.:*

This is an appeal of Alliance Insurance & Surety Company from the judgment ordering it to pay the Republic of the Philippines the sum of ₱11,000 plus interests thereon at the legal rate of 6 per cent from June 16, 1953 up to May 20, 1954, the date of the filing of the complaint, and 12 per cent from the latter date until full payment, and the costs.

Vicente Rodriguez was the owner of a warehouse located behind his residential house on Bonifacio Street, Rizal, Nueva Ecija. Upon his application, the Bureau of Commerce issued in his favor a license to engage in the business of receiving palay for storage in the said warehouse (Exhibit E). In compliance with section 6 of Act 3893, Rodriguez insured with appellant surety company, for the amount of ₱11,000, the stock of palay stored in the said unnumbered warehouse. After Rodriguez paid the corresponding premium for one year, appellant issued fire policy 2127 dated January 19, 1953. It was expressly agreed in the policy that "Loss, if any,

this Policy shall be payable to the Bureau of Commerce as their interest may appear, subject to the same terms, conditions, clauses and warranties of this Policy." (Exhibit A–2.)

On May 29, 1953, the warehouse in question, with the stock of palay deposited therein, was burned. Accordingly, on or about May 31, 1953, Chief Agbayani of the Bonded Warehouse Section of the Bureau of Commerce called up appellant's Manager Tomas Concepcion and informed him of the fire; and on June 16, 1953, a formal demand by the Director of Commerce was sent to appellant asking for the immediate payment of the value of fire policy 2127 (Exhibit B). Appellant answered this demand on the 19th of the same month stating that it was not yet in a position to pay the claim because said claim was still in the stage of adjustment and settlement by its adjuster, Manila Adjustment Company (Exhibit C). On August 7, 1953, the said adjuster requested appellee's instrumentality, the Bureau of Commerce, for a complete list of the depositors of palay in the bonded warehouse in question, who filed their claims with the Bureau with specification of the "numbers and dates of warehouse receipts issued to the depositors, number of sacks of palay shown in the receipts as still in the custody of the warehouseman as of 29 May 1953, and the value claimed by each depositor." The adjusting company also requested for the weekly reports submitted by Vicente Rodriguez pursuant to the provisions of section 39 of Commerce Administrative Order Numbered 11–1 dated October 9, 1941, as amended. These requests were complied with on August 29, 1953 with the transmittal to the said adjuster of a letter with the receipts, weekly reports and list of depositors-claimants as annexes, wherein it was shown that the total of the palay deposited as of May 23, 1953, the date of the last weekly report, was 1,027 sacks and 14 kilograms of rice, the prices of which ranged from ₱8.50 to ₱11.50 per sack (Exhibits N, N–1 to N–8). With respect to the originals of the warehouse receipts issued by Rodriguez to the depositors, the adjuster was advised that they could be inspected at the Bureau any time during office hours (Exhibit O).

Appellant not having made any payment until February 8, 1954, appellee, through the Director of Commerce, addressed another letter to appellant calling its attention to the provisions of the Insurance Law and to those of Republic Act 487, and again demanding the payment of the value of the fire policy in question (Exhibit D). And because another letter of demand dated April 21, 1954, addressed by the Solicitor General, failed to produce any favorable result, appellee initiated this action on May 20, 1954, which action was decided in its favor by the Court of First Instance of Manila on August 17, 1955.

Appellant does not dispute the fact that in the ordinary course of insurance transaction, it issued on January 19, 1953, fire insurance policy 2127, the expiration date of which was at 4:00 o'clock in the afternoon of January 14, 1954. Neither does it deny that while said policy was in full force and effect, a fire occurred on May 29, 1953, razing to the ground the warehouse of defendant Vicente Rodriguez together with all the palay and rice deposited therein. However, appellant contends in this appeal that it should not be made to pay appellee the value of the policy (*a*) because the latter has no insurable interest in the palay insured, and (*b*) because appellant does not know whom to pay, whether the Government or Vicente Rodriguez, who also filed a claim for the payment of the same policy.

After going over the record of this case, we find and so hold that both contentions are untenable. At the outset, it is important to note that appellant, through its assistant general manager, Federico Ortiz, Jr., manifested in open court that it does not refuse to pay the Government or the Bureau of Commerce "so long as the Government can prove its right in this insurance policy."

To promote and facilitate business transactions on rice, the Government authorized the establishment of bonded warehouses by virtue of Act 3893, known as the Bonded Warehouse Act. Its section 6 provides that a person applying for a license to engage in the business of receiving palay or rice for deposit in his warehouse must put up a bond for the security of the depositors, to be payable to the Director of Commerce. In compliance with this legal mandate, defendant Rodriguez insured with appellant the stock of palay for the proper safekeeping of which he was responsible. When appellant issued the disputed policy, it positively knew that appellee was not the owner nor the depositor of the palay in the warehouse of Rodriguez. Despite this knowledge, appellant insured the deposited palay and promised to pay appellee in case of loss, thereby intentionally and deliberately inducing the latter to issue license exhibit E in favor of Rodriguez on March 9, 1953. Appellant, therefore, cannot now be permitted to forego its obligation to pay appellee the value of fire policy 2127 [Section 68(*a*), rule 123, Rules of Court]. Stated in other terms, the right of appellee to demand payment of the value of this policy emanates from the law, Act 3893, the dispositions of which are conclusively presumed to be known by appellant [section 68(*e*), supra].

Upon the other hand, the fact that appellee is not the owner of the palay insured and burned does not render the controverted policy void nor does it nullify appellee's

right to claim for the payment of its value. Said policy, by providing that "Loss, if any, this Policy shall be payable to the Bureau of Commerce," contains what is termed as a "simple loss-payable clause," which in its essence is a contingent order or assignment of the ₱11,000 should the event insured against occur.

"In addition to the class of assignments mentioned in a preceding section, there is another species which is similar to that of the assignment of a chose in action, namely, those instances where the policy is issued to one person, 'loss, if any, payable to' another, or 'in case of loss pay the amount to ———.' Concerning this class of policies, a Massachusetts court has said: 'It is a contingent order or assignment of the money should the event happen upon which money will become due on the contract. If the insurer assents to it, and the event happens, such assignee may maintain an action in his own name, because upon notice of assignment the insurer has agreed to pay the assignee instead of the assignor; but the original contract remains; the assignment and assent to it form a new and derivative contract out of the original. But the contract remains as contract of guaranty to the original assured. He must have an insurable interest in the property, and the property must be his at the time of the loss. The assignee has no insurable interest prima facie in the property burned, and does not recover as the party insured, but as the assignee of a party who has an insurable interest and a right to recover, which right he has transferred to the assignee, with the consent of the insurers.' And this statement seems fairly to present the views of many courts, although there are variant statements, and some apparent difference of opinion as to the exact nature and effect of loss-payable clauses in fire insurance policies. For instance, it has been held that an assignment of policy results from an indorsement thereon of 'loss, if any, payable to' a named person, 'as interest may appear,' and that, if they are mortgagees of the property insured, they are entitled to recover for a loss not exceeding the amount of their debt. . . . According to a Maryland decision, an insurance policy making loss payable to another than insured must be regarded as having been at its inception assigned to such other person with the consent of the company, and it is not necessary for him to obtain a transfer of the policy from the insured, assented to by the company, as in ordinary cases." (5154–5156, Cyclopedia of Insurance Law, Couch, 6.)

The mere fact that Vicente Rodriguez also filed a claim for the same questioned policy does not and should not place appellant in a dilemma as to whom the payment should be made, because in his answer to the amended complaint, defendant Rodriguez stated that his co-defendant, Alliance Insurance & Surety Company, by virtue of fire policy 2127, has the obligation to pay the Bureau of Commerce the sum of ₱11,000, "the cost of palay which was burned in the defendant's warehouse and legally stored therein by bona fide depositors."

Without merit is appellant's contention that appellee did not notify appellant within fifteen days after the fire on May 29, 1953. The testimony of Rafael Agbayani that he did notify appellant's Manager Tomas Concepcion two or three days after the fire occurred stands

undisputed. Concepcion did not testify—nor did any other person—to deny Agbayani's declaration on this material point.

Another unmeritorious contention of appellant is that, if at all, it is only liable for the palay deposited after defendant Vicente Rodriguez was given a license. It is not covenanted anywhere in policy Exhibit A–2 that the insurance would cover only the palay deposited after the issuance of license Exhibit E. On the contrary, by stating that "On stock of palay only, the property of the Insured or for which he is responsible in case of loss, whilst contained during the currency of this Policy, in the building situate Unnumbered Bonifacio Street, Municipality of Rizal, Province of Nueva Ecija, Philippines," the said policy covered all the palay deposited in the warehouse of Rodriguez when the fire broke out.

The above rulings on the principal issue in this appeal render it pointless to further discuss and pass upon the other assignments of error which, anyway, are not prejudicial nor reversible and/or not supported by the evidence.

WHEREFORE, having found the judgment appealed from to be in conformity with law and the evidence, the same is hereby affirmed with costs against appellant.

IT IS SO ORDERED.

Dizon and *Peña, JJ.*, concur.

Judgment affirmed.

[No. 16877-R. June 30, 1958]

MARCIAL NOGUERA & SEGUNDINA C. NOGUERA, plaintiffs and appellees, *vs.* MAGDALENA GALLARDO, defendant and appellant.

EMPLOYER AND EMPLOYEE; EMPLOYER IS LIABLE FOR THE NEGLIGENCE OF HIS DRIVER.—Under the principle of "culpa aquiliana", defendant, the employer is liable for the consequences of his driver's negligence (Article 2180, New Civil Code; Serf *vs.* Medel, 33 Phil., 37), because negligence of the agent in questions of this kind is negligence of the principal.

APPEAL from a judgment of the Court of First Instance of Manila. Soriano, *J.*

The facts are stated in the opinion of the Court.

Alidio, Castro & Associates, for defendant and appellant.

Yap, Duque, Leonin & Associates, for plaintiffs and appellees.

PICCIO, *J.:*

This is an action for the recovery of damages and expenses as resultant of a truck's—owned and driven by a chauffeur employed by defendant—having hit and damaged plaintiff's car, and caused injuries to said plaintiffs who were travelling in the said car at the time in the thoroughfares of the City of Manila.

The Court of First Instance of Manila, presided by Hon. Edilberto Soriano, after trial rendered decision in favor of plaintiff's awarding them ₱500 for lost income due to plaintiff Segundina Noguera's incapacity to work for about a month; ₱500 for medical treatment; ₱331.60 for hospital fees; ₱120 doctor's fee and ₱2,000 for moral damages in all the sum of ₱3,451.60, plus ₱1,400 reparation of damages suffered by the car and rentals for the use of another car while the damaged car was being repaired, or a total of ₱4,851.60 plus the costs.

This case is before us on appeal by defendant who has filed the following assignment of errors to wit:

First assignment of errors:

The trial Court erred in finding that the appellant's driver, Mario Carillo, was the one negligent and his negligence was the proximate cause of the collision.

Second assignment of errors:

The trial Court erred in finding that the appellant's bus was the one that directly smashed the right side of the car, instead of the car sideswiping the left front bumper and left-front mudguard of the bus of the appellant.

It is contended by plaintiffs that upon reaching Tayabas street their driver slowed down but seeing no motor vehicle coming toward the north, they proceeded to drive on; that they had hardly crossed the east half of Rizal

Avenue when defendant's bus running at full speed from the south overtook their car and smashed its right side.

Defendant's version, however is as follows: After picking-up a woman passenger along Rizal Avenue between Camarines and Tayabas Street her truck proceeded its way northward at 10 to 20 kilometers per hour; that in the intersection of Tayabas Street and Rizal Avenue the passengers felt a sudden jerk because driver Mario Carillo applied its brakes and this was followed by an impact as plaintiff's fast-running automobile came from the left and travelling along Tayabas street sideswept the left bumper and left front mudguard of said bus.

The lower Court in disposing of these conflicting versions states in its decision:

> The sharp conflict in the parties' evidence above set out thus consist in that, while plaintiffs contend that it was the bus which directly smashed the right side of their car, defendant in turn, claims that it was the car which sideswiped the left front bumper and left front mudguard of her bus. The photograph Exhibit H of the car in question goes a long way to boost plaintiffs' version and to discredit that of the defendant. This revealing photograph, which corroborates testimonial evidence for the plaintiffs, shows that the latter's car was damaged on its middle right side. This goes to show that it was the bus which hit the car, as contended by the plaintiffs, and not the reverse, as claimed by defendant. For if it were the car that actually hit the bus, in the relative positions that they were shortly before the smash-up, the most likely part of the car that would sustain damage would be its front bumper, and that of the bus its left side, front, middle or rear. As already stated, and as unerringly shown by the photograph Exhibit H, it is the middle right side of the car that was badly hit and damaged, showing thereby that it was the offended, and not offending, vehicle. Three defendant's alleged eye-witnesses, however, concurrently testified that the said car, while speeding along Tayabas Street and crossing Rizal Avenue, sideswept the slow-moving bus. This Court cannot place much stock on this testimony. If this were true, then the portion of the car that would likely sideswipe the bus would be its front right side, or its entire right side if it was racing east. Exhibit H, however, shows that the right side and the rear right side of the car are intact, or have not even been bruised hence, the sideswiping theory appears untenable. Moreover, the middle right side of the car appears to have been violently pushed or pressed or bent towards the inside, and judging from the resulting damage, the latter was more probably caused by a direct and square hit than by a mere sideswiping. Finally, as between the clashing claim of defendant that it was the car that was running at a fast clip, and that of plaintiffs that it was the bus that was overspeeding, again, the latter theory is the more believable. The daily flow of vehicular traffic on Rizal Avenue is such that motorists cruising along the said avenue drive much faster than those crossing through the many side street bisecting the same, because of the hazard in making such a crossing at an excessive speed. It is accordingly most improbable that plaintiffs driver could have over speeded on the occasion in question, let alone the fact that both plaintiffs were inside the car to caution the said driver should the latter be bent on being reckless.

The foregoing findings of facts and conclusions by the trial Court could hardly be improved. It may be added that, given the position of plaintiff's car which appears to have already passed the middle of Rizal Avenue when it was hit, is self-evident of the circumstance that it was defendant's bus which did not or failed to stop upon seeing plaintiff's car. That the bus was running at excessive speed may be deduced therefrom.

Again, as has been established by the evidence, defendant's driver, Mario Carillo, was in possession of another driver's license, and cheated the investigating policeman by presenting to him the corresponding driver's license of one Gabriel Diaz—who had lost it. This circumstance raises the presumption *"Juris Tantum"* that defendant's driver, in violating traffic regulations, was acting negligently (Article 2185, New Civil Code.) This disposes of defendant's first two assignments of errors.

In her third assignment of errors, defendant questions the lower court's having held her civilly liable for the damages resulting from her driver's negligence, justifying her assertion by submitting that she had exercised due care in the selection of her employee or driver.

The Court is not in accord with this contention. Under the principle of "Culpa Aquiliana" the defendant, as the employer of driver Mario Carillo, is liable for the consequences of the latter's negligence (Article 2180, New Civil Code, Serf *vs.* Medel, 33 Phil. 37), because negligence of the agent in questions of this kind is negligence of the principal. Defendant, however, argues through counsel that she exercised due care in employing her driver Mario Carillo. The evidence does not prove this assertion. It appears that Mario Carillo, a former army driver, was granted a permit to drive a passenger bus on May 6, 1952, for a period of fifteen days but that one month thereafter while driving the said bus was involved in the instant occurrence. This, as the lower court states its decision, could hardly be evidence in support of defendant's contention that she had acted as a good father of a family in selecting her driver. Add to this, the circumstance that Carillo was carrying a bogus driver's license at the time-which photographs his character.

As a consequence of the impact, plaintiff Segundina Noguera lost consciousness and sustained physical injuries on different parts of her body as well as her head; and Marcial Noguera suffered physical injuries as a result thereof. Segundina was taken to Saint Luke's Hospital, remained there from July 10 to July 20, 1952 exclusive. After her release from the Hospital she had to undergo further medical treatment. Her husband's physical injuries took seven days to heal.

Regarding defendant's fourth assignment of errors; the trial Court awarded plaintiff Segundina Noguera ₱500 for income lost during her one month incapacity to perform for her habitual work. It appears that this finding is in accordance with the evidence and should not be disturbed. So are the trial Court's findings and award of the corresponding damages for medical attendance, hospital and doctor's fees—which are supported by corresponding receipts.

In questions involving mental anguish and sufferings, however,—which need not require evidence to establish, this Court, considering the attending circumstances, hereby raises the assessed damages from ₱2,000 to ₱3,000, so much so that the total award in this group of claims amounts ₱4,451.60.

The award for repairs and rentals amounting to ₱1,400 appears reasonable, and this added to the sum of ₱4,451.60, makes a total of ₱5,851.60 which the Court orders defendant to pay plaintiffs.

Thus modified, the decision is hereby affirmed, with the costs against the defendant.

SO ORDERED:

Ocampo and *Santiago, JJ.*, concur.

Judgment modified.